

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE M. PADILLA, as the Special) Docket No. 09 C 1222
Administrator of the Estate of)
MAXIMILIAN PADILLA,)
Plaintiff,)
v.) Chicago, Illinois
HUNTER DOUGLAS WINDOW) August 20, 2013
COVERINGS, INC.,) 10:10 o'clock a.m.
Defendant.)

VOLUME 1
TRANSCRIPT OF PROCEEDINGS - DAUBERT HEARING
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

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1 (Proceedings had in open court:)

2 THE CLERK: 09 C 1222, Padilla versus Hunter Douglas
3 Window Covering, for Daubert hearing.

4 MR. JAUREGUI: Good morning, your Honor. Arturo
5 Jauregui and Ed Santiago on behalf of the plaintiffs. Mr.
6 Santiago will be presenting Mr. Wright for purposes of this
7 hearing today.

8 THE COURT: Okay. Very good.

9 MR. WILLIAMS: And good morning, your Honor. Jeff
10 Williams and Brian Watson, Schiff Hardin, for defendants.

11 THE COURT: Okay. Shall we start?

12 MR. SANTIAGO: Yes, your Honor. We'd like to call up
13 Dr. Robert Wright.

14 THE COURT: Good morning, Mr. Wright. Please stand
15 up, remain standing.

16 (Witness duly sworn.)

17 THE COURT: Go ahead and take a seat.

18 You may proceed.

19 MR. SANTIAGO: Thank you, your Honor. May it please
20 the Court, counsel.

21 ROBERT R. WRIGHT, PLAINTIFF'S WITNESS, DULY SWORN

22 DIRECT EXAMINATION

23 BY MR. SANTIAGO:

24 Q. Dr. Wright, can you state your full name and spell it for
25 the record please?

1 A. Robert R. Wright, W-r-i-g-h-t.

2 Q. Okay. Where do you reside?

3 A. I reside in Charlottesville, Virginia. Actually Free
4 Union, Virginia, which is a suburb of Charlottesville.

5 Q. Are you currently employed?

6 A. Yes, I am. I work as an independent contractor for our
7 consulting company, which is Lexpert, Inc., L-e-x-p-e-r-t, Inc.

8 Q. And what is your profession and expertise?

9 A. I am a consultant in the areas of force analysis and
10 dynamics, which includes accident reconstruction, product
11 design and product safety.

12 Q. Can you explain to the Court how force analysis and
13 dynamics assists you in reconstructing an accident scene?

14 A. Well, someone who has expertise in force analysis and
15 dynamics has the ability to study various objects and determine
16 what happens to those objects as forces are being applied, what
17 motions or dynamics these objects will undergo as forces are
18 applied, and then be able to determine what will happen or why
19 it happens in various scenarios.

20 Q. Is that a title that you have coined yourself? Or is that
21 something that everyone uses in your profession?

22 A. I have coined that. There are other people that use that
23 after I coined it because it's -- it is definitely more than
24 just accident reconstruction. It is someone who has a lot of
25 educational background in physics, in mathematics and

1 engineering.

2 Q. You mentioned your work as a reconstructionist. Can you
3 describe to the Court what your work is as a reconstructionist,
4 what you do?

5 A. I've been retained to look at hundreds of various types of
6 accidents and accident scenarios involving various products.
7 And what I do as an accident reconstructionist is determine
8 what happened during an event and determine why it happened,
9 and then determine how that accident scenario could have
10 possibly been avoided.

11 Q. Are any two fact patterns the same in any reconstruction
12 you've done?

13 A. The fact patterns are always different. I've done a lot of
14 automobile accidents, a lot of off-road vehicle accidents, a
15 lot of workplace accidents, and accidents involving just
16 household products. And each scenario is obviously different
17 and unique to itself. But the pattern or the methodology used
18 is very similar in each accident investigation and analysis.

19 Q. How long have you been practicing reconstructions?

20 A. The first litigated assignment that I was given was back in
21 the early 1980s. So I would say probably in excess of 30 years
22 now.

23 Q. Okay. About how many reconstructions have you done over
24 the time?

25 A. Literally hundreds, probably somewhere close to a thousand.

1 I haven't counted the exact number, but I would say it's very
2 close to a thousand, if not more.

3 Q. I think you touched upon the idea of a methodology to
4 reconstruction. Do you have or use a certain methodology?

5 A. I use what we consider in the field as an accepted
6 methodology, and that is to always visit the accident site if
7 it's still available. Sometimes the accident site isn't
8 available. But always visit the accident site. Always look at
9 any reports that have been written, such as police reports,
10 accident reports.

11 Look at photographs that were taken at the time of the
12 accident, if they exist. Talk to witnesses if there are any
13 witnesses around. Look at everything that you can possibly put
14 your hands on. Every piece of data is needed, and you try to
15 use all the data you can gather anytime you investigate and
16 analyze any type of accident scenario.

17 So the methodology, whether it was this assignment or
18 any assignment, is always the same.

19 Q. Have you ever taught in any college setting?

20 A. Yes. I was from 19 -- well, as soon as I got my Ph.D.,
21 which was in 1975, I was asked to join the faculty at Ohio
22 State, which I did. That's where I got my Ph.D. was from the
23 Ohio State University in Columbus, Ohio.

24 I joined the faculty and taught for three years at
25 Ohio State, took several years -- actually one year off to --

1 to do some -- to become a visiting professor at Ohio Wesleyan
2 University. Then I came back to Ohio State and taught in the
3 college of engineering. I was assistant to the dean in the
4 college engineering, and I held that position from 1979 through
5 1987.

6 And I taught engineering and mathematics courses for
7 the college engineering at the Ohio State University.

8 MR. SANTIAGO: I may have gotten a little bit ahead of
9 ourselves. I just -- your Honor, may I approach the witness?

10 THE COURT: You may.

11 MR. SANTIAGO: Counsel.

12 BY MR. SANTIAGO:

13 Q. I'm showing you what's been marked as Plaintiff's
14 Exhibit 1, Doctor. Can you tell us what that is?

15 A. This is my most recent copy of my CV, curriculum vitae.
16 And it is current through this month, August of 2013.

17 THE COURT: Counsel, do you have an extra copy?

18 MR. SANTIAGO: Yes, I do. Sorry, Judge. I'd like to
19 approach the bench as well.

20 THE COURT: Thank you.

21 BY MR. SANTIAGO:

22 Q. Can you summarize for us what your educational background
23 is and your training?

24 A. Yes, I was fortunate enough to receive an athletics
25 scholarship from Butler University in 1960. And I -- I proudly

1 completed four years at Butler University majoring in
2 mathematics with a minor in physics and chemistry. And I'm
3 very proud of my alma mater. Several years ago, they went to
4 the national championship game in basketball. Actually they
5 went two years in a row. And I earned my bachelor's degree, as
6 I said, in mathematics with a minor in physics and chemistry.

7 I was offered a fellowship to attend Ohio State
8 University, which I did. I received my master's in 1967 and my
9 Ph.D. from Ohio State in 1975. My dissertation combined
10 science, mathematics and engineering. So I was qualified to
11 teach at the collegiate level in all three areas, which I've
12 done.

13 Q. Have you ever presented any papers on the issues of
14 reconstruction?

15 A. Yes, I've been asked on two different occasions to present
16 papers on accident reconstruction. One was in London, England,
17 and then another one was in Montpellier, France. I was asked
18 to be one of the featured speakers at the Engineering Systems
19 Design and Analysis Conference in Montpellier to talk in my
20 area of expertise, which was accident reconstruction and
21 reconstructive analysis.

22 Q. And in that paper, did you present any of your
23 methodologies for reconstructing cases?

24 A. Yes, I did. And in my paper, which was published by the
25 American Society of Mechanical Engineers, I presented a paper

1 on accident reconstruction, as I stated. And I think I have a
2 copy of it in here. I am looking quickly through my file.

3 Here is a copy. This is a copy of the brochure that
4 was used for the conference. And if you look on the second
5 page, there is my picture in the little description of -- of my
6 presentation to the -- to the group that was -- in this group
7 the -- the Engineering Systems Design and Analysis Conference
8 was co-sponsored by many international co-sponsors, which
9 included the Chamber of Mechanical Engineers of Turkey, the
10 National Group in France, the Japanese Society of Mechanical
11 Engineers, the Chinese Society of Mechanical Engineers, the
12 Society of Technicians of Italy.

13 So there were quite a few number of international
14 group of scientific and technical organizations which sponsored
15 this and asked me to be one of their featured speakers.

16 Q. And your methodologies based -- the one you presented in
17 that paper hasn't changed over the years?

18 A. No, it hasn't. And I go through how -- how one would take
19 a look at and analyze various accident scenarios, various
20 different types of accidents, both off-road and on-road
21 vehicular accidents, industrial accidents, various accident
22 types and scenarios.

23 Q. I just want to make clear for the Court, when you -- I know
24 you summarized the kinds of items you look at as you conduct
25 your reconstruction. But with respect to actual method, what

1 are you referring to when you -- when you refer to methodology?

2 A. When I refer to my methodology, it's outlined very clearly
3 in my paper. And references to other accident reconstruction
4 specialists and experts in the filed are listed in the -- in
5 the pages of references at the end of my paper, which, as I
6 said, was published in the American Society of Mechanical
7 Engineers.

8 Q. Do you proceed from the beginning or the end of a
9 particular case and work backwards?

10 A. Well, it's really interesting. Most accident scenarios --
11 sometimes you start in the middle and work both direction. In
12 most accident scenarios you have very good documentation at the
13 end. Photographs were taken when the accident has been
14 concluded.

15 In most cases you have very good documentation at the
16 end. And then you have to work back to the front to determine
17 what happened and why it happened. And you use the laws of
18 physics. You use mathematics, differential equations. All of
19 the tools that you have at your disposal to obtain and
20 determine in the best possible scenario what did physically
21 occur in this accident and why the accident unfolded the way it
22 did.

23 Q. Which one of those methodologies did you apply here?

24 A. I applied --

25 Q. Start --

1 A. I applied what I always apply in all of them. But in this
2 particular case, we know what happened at the end. So I
3 started at the end and worked backwards to the -- to the front.

4 Q. Okay.

5 A. And that's what you do in most accident scenarios that you
6 analyze.

7 Q. Now, when were you retained in this case?

8 A. I was retained in November of 2010.

9 Q. Okay. And what were you -- who retained you, by the way?

10 A. Plaintiff's counsel, Mr. Jauregui.

11 Q. What were you asked to do?

12 A. I was asked to determine -- to analyze the accident
13 scenario, to determine what happened during this accident, and
14 determine if there were any things that caused or contributed
15 to the accident.

16 And that's usually what I'm asked to do in almost
17 every assignment that I get involved in. I'm always asked to
18 analyze, to -- to investigate and analyze and then determine
19 what happened and why it happened.

20 Q. Did you look at any specific items or documents in this
21 part of your reconstruction in this case?

22 A. Yes, I do that in every case. And obviously each case is
23 unique to itself. But in this case, I was able to get the
24 police reports. I was able to read the depositions of the
25 police officers. I was able to look at the medical examiner's

1 report. I was able to read her deposition testimony.

2 I was able to look at photographs that the police took
3 right after the accident. I was able to visit the accident
4 site. I was able to inspect the actual subject window blinds
5 that were involved in this accident scenario. I was able to
6 study the schematics of Hunter Douglas, who was -- who
7 manufactured the blinds. I was able to study their schematics
8 of how the blinds work, how they operate.

9 I was able to look at a lot of documents that Hunter
10 Douglas has had provided. I was able to read deposition
11 testimony of quite a few of Hunter Douglas's employees and
12 former employees. I was able to read the CPSE, the Consumer
13 Product Safety Commission's review on window blinds, window
14 coverings.

15 I was -- basically, as I do in all my investigations
16 and analyses, I try to put my hands on as much data as I
17 possibly and physically can.

18 Q. And you said you went out. Did you go out and examine the
19 actual bedroom where this --

20 A. Yes, on January 20 of 2011, I was able to visit the actual
21 accident site, visit Max's bedroom in the Padilla home where
22 the accident occurred.

23 Q. Did you --

24 A. I was able to reinstall the blinds, the physical subject
25 blinds, in the accident room. I was able to take pictures. I

1 was able to take notes and measurements in the room. And I
2 even have a sheet of my notes that I made on that particular
3 day.

4 Q. We'll get into each one of those things. Did you take
5 photographs?

6 A. Yes, I did take photographs.

7 Q. Let me show you what's been marked as Plaintiff's Group 4A
8 through C.

9 MR. SANTIAGO: Your Honor, I have to apologize. I
10 don't have any other blowups of these. I can -- may I
11 approach.

12 THE COURT: You can put them up on the viewer there.
13 You may have to zoom out.

14 MR. SANTIAGO: I am not sure how to do that.

15 THE COURT: Why don't you lift the arm all the way up.
16 There you go.

17 BY MR. SANTIAGO:

18 Q. There is some glare in there, but do you remember what this
19 is about, this picture?

20 A. Yes, this is a photograph of 16375 Terry Lane in Oak
21 Forest, Illinois.

22 Q. Did you take this photograph?

23 A. I took that photograph on January 28 of 2011.

24 Q. Whose home is this?

25 A. That is the Padilla home at that address in Oak Forest,

1 Illinois.

2 Q. Is -- do you know if this is where the accident occurred?

3 A. Yes, this is physically the address, the outside of the
4 home, of where the accident occurred.

5 Q. Why did you take this particular picture?

6 A. I took that particular picture to show the outside of the
7 house and to show the location of Max's bedroom, the little
8 boy, the three-year-old boy, who was -- who was strangled by
9 the Hunter Douglas blinds.

10 Q. Can you tell on this photograph what room window that would
11 be?

12 A. Yes, on the second floor it is the window closest to the
13 door on the second floor. And it overlooks the driveway and --
14 and the -- Max was trying to look out that window.

15 And I don't know if you wanted to point to the actual
16 window that -- that was the window where that -- yes, that one.
17 That is the window where the accident occurred.

18 Q. And that's Group Exhibit 4A?

19 A. That's correct.

20 Q. I show you Group Exhibit Plaintiff's 4B. Can you tell me
21 what that is?

22 A. That is -- I took this photograph. This is the nightstand.
23 And obviously --

24 Q. What does it show?

25 A. It shows the nightstand which Max climbed up on the day of

1 the accident.

2 Q. Is this his bedroom?

3 A. This is his bedroom.

4 And to the left is the window, the Hunter Douglas
5 window blinds. And to the right, just barely you can see is
6 his bed, Max's bed, that existed in that room.

7 And the window, which is covered with the window
8 blinds to the left, is the same window we were looking at from
9 the outside in the previous photograph.

10 Q. Okay. Now, it shows some vertical blinds there on the
11 left. Do you see that?

12 A. That is correct.

13 Q. What are those? Are those the original or some new ones?

14 A. No, those are the original blinds. I reinstalled them for
15 my inspection and analysis.

16 Q. I am going to show you what's been marked as A, Group
17 Exhibit A -- I'm sorry, Group Exhibit 4C. And can you tell me
18 what this picture is about?

19 A. This is again in the same room. And now we're looking out
20 the window. The blinds are partially open. And so we're now
21 looking out the window that Max was trying to look out the day
22 that he was killed.

23 And this is, as I said, in his bedroom looking
24 basically to the -- to the south. So he --

25 Q. So did you reinstall these blinds?

1 A. I -- I reinstalled them, yes. The blinds were taken down
2 after the accident. But I reinstalled them for my inspection
3 and analysis.

4 Q. Why was that important to you?

5 A. It was important for me to get -- as I stated before, to
6 get all the measurements and to get pictures. I try to take
7 pictures very similar. If police take pictures, I try to take
8 pictures very similar to what the police had taken. And the
9 police did take the night of the accident quite a few
10 photographs.

11 And so I tried to take so I get a very good spatial
12 feel of what physically occurred. So when I look at the police
13 photographs, then I look at my photographs, I know exactly
14 spatially the relationship of what did occur on that particular
15 time of the accident.

16 Q. And --

17 THE COURT: Counsel, before you proceed, can I take a
18 look at that --

19 MR. SANTIAGO: Sure.

20 THE COURT: -- second photo?

21 MR. SANTIAGO: These?

22 THE COURT: Yes.

23 (Brief pause.)

24 THE COURT: Okay. Thank you.

25 BY MR. SANTIAGO:

1 Q. You indicated you also saw police photographs?

2 A. That is correct.

3 Q. And what time period did those photographs cover?

4 A. The photographs -- at least my understanding is that
5 photographs were taken right after the accident, sometime in
6 the evening. The accident occurred, if I remember correctly,
7 right around 6:00 o'clock, in that time frame. And the
8 photographs were taken the same day, obviously later in the
9 evening.

10 MR. SANTIAGO: Judge, I'd like to approach with
11 Group 10, 1 through 4?

12 THE COURT: Go ahead.

13 MR. SANTIAGO: Show counsel.

14 I am going to put them on the thing. I give them to
15 the Judge.

16 THE COURT: Does the arm go any further? Does the
17 camera move up any more?

18 MR. SANTIAGO: I don't know. Let's see. It should.

19 THE COURT: Hold on for a second.

20 (Brief pause.)

21 BY MR. SANTIAGO:

22 Q. Dr. Wright, looking at Group 10, No. 1 in that group of
23 exhibits. Can you tell me what this photograph shows?

24 A. This was taken the night of the accident, right after the
25 accident. And you can see that this -- it is the same

1 nightstand that I took a picture of in 2010. Obviously this is
2 in 2008, right the night of the accident.

3 Q. This is his actual room right after he was strangled?

4 A. Exactly correct.

5 And you can see that the table shows -- the nightstand
6 shows the -- some dust. You can see on the nightstand. You
7 can see that there is a toy knocked over and leaning against
8 the wall. You can see the chair next to the nightstand has
9 been knocked over.

10 So you can definitely tell that Max, who was only 44
11 and a half inches tall, was not tall enough to look out the
12 window. I measured the windowsill, and the windowsill is 47
13 inches off the floor.

14 And so he was not tall enough to look out the window.
15 So you could tell he climbed up on the nightstand to look out
16 the window.

17 Q. I show you Group 10, photo No. 2. And is this also a photo
18 from the police department?

19 A. Yes, this is a photograph again at a different angle but of
20 the same nightstand. And you can see the same toy to the left
21 that has been knocked over during his -- his climbing --

22 Q. Do you know if there was a lamp on this table at some --

23 A. Yes, there was a lamp. You can see the markings of the
24 dust where the lamp was sitting before the accident.

25 Q. Do you know if -- anyone talking whether that was knocked

1 off or --

2 A. I assumed it was knocked off because it's not on the
3 nightstand when the pictures were taken. But you definitely
4 can see clear evidence that it was there.

5 Q. Showing you No. 3 out of that group exhibit.

6 A. If you would turn it 90 degrees, it would be easier to --
7 that's better.

8 And again, this is the same nightstand again. It's
9 the same picture. Nothing has been changed or moved. You can
10 see the vertical blinds in the upper left-hand corner. You can
11 see the nightstand and the chair and the toy. Actually you can
12 see several toys that have been knocked to the floor off the
13 nightstand.

14 Q. No. 4 from the group, Group 10. Look at that. Let's see.

15 A. This -- this photograph was taken, as I said, by the police
16 the night of the accident. And you can see it clearly
17 indicates the looped cords that are used by Hunter Douglas to
18 actuate the blinds.

19 Q. And you can see the -- at the lower right-hand side,
20 that's -- what's this thing here?

21 A. That is the nightstand that we had several pictures before,
22 that I had taken a picture of when I inspected, and the police
23 had taken pictures the night of the accident. And again, this
24 is still the night of the accident. You can see the looped
25 cord, the closed loop, clearly in the center of the picture.

1 Q. Okay. Doctor, you indicated you took some measurements as
2 well?

3 A. That is correct. I did. I took quite a few measurements.
4 When you are at the accident site, you don't know always
5 exactly which measurements you are going to need when you get
6 back to do your analysis. So I try to take as many as I
7 physically can.

8 I also try to take measurements to check to see if the
9 police measurements are accurate. So -- because the police
10 usually will have some measurements in their accident report.
11 So I always try to check theirs.

12 I sometimes don't take all they take. But I do spot
13 check theirs and take as many as I think I am going to need.

14 MR. SANTIAGO: Your Honor, can I approach the bench?

15 THE COURT: You may.

16 MR. SANTIAGO: This is Exhibit 2. I'm going out of
17 sequence. Apologize.

18 BY MR. SANTIAGO:

19 Q. Can you tell us what Exhibit 2 is?

20 A. Exhibit 2, as I indicated, were the notes that I took on
21 January 28 of 2011 at the accident site, which is there in Oak
22 Forest, Illinois.

23 Q. Now, you took certain measurements. I am just going to ask
24 you about a couple of them.

25 A. Sure.

1 Q. What is this measurement here?

2 A. That is the height that the windowsill -- the window
3 opening is above the floor.

4 Q. Why was that measurement important to you?

5 A. That's important because Max was only 44 and a half inches
6 tall. And you can see the windowsill is 47 inches above the
7 floor.

8 So when he hears his siblings and his mother outside,
9 he can't look out the window. He's not tall enough to look out
10 the window because he's only 44 and a half inches and the
11 windowsill is 47 inches off the floor.

12 So to look out to see what they were doing, he had to
13 climb up on something.

14 Q. Okay. And this measurement here is the bottom of the
15 window blinds and --

16 A. Those are the bottom of the slats or the veins of the
17 vertical blinds. And they are 41 and a half inches off the
18 floor.

19 Q. Do you know based on the depositions that you read,
20 especially the mother, whether Max was found hanging off the
21 floor or laying on the floor?

22 A. Max was several inches off the floor. He was physically
23 hanging when Mrs. Padilla found him in his own bedroom.

24 Q. Were you able to look at any -- well, let me start with
25 this.

1 The actual blind itself that was involved in this
2 case. You indicated earlier you got to take a look at it. I
3 am going to use it here as Exhibit 9.

4 Can you tell us what this is?

5 A. That is the -- what we call the headrail. That is what the
6 physical blinds hang from. That is the mechanism that actuates
7 and supports the vertical veins or slats.

8 Q. These items here, what are they called?

9 A. They hold the slats or the veins of the blinds.

10 Q. Okay. And how is looking at this important to your
11 reconstruction and opinions?

12 A. It's -- it's important to determine, first of all, the
13 mechanism of how the blind actually works. And is there other
14 ways of actuating or working the blinds that would not have a
15 closed loop or a strangulation device.

16 Q. How is this actuated?

17 A. This one was actuated with two closed loops, a metal closed
18 loop, a metal chain or metal cord; and a nylon or fabric cord
19 that was also a closed loop.

20 Q. Looking at Exhibit 9, can you tell the Court where those
21 corded or nylon loops would come from.

22 A. Yes, the cord, the fabric cord, comes out these two holes
23 and then hangs down in a loop. And we could see in the police
24 photograph, the loop was very clearly extending down and right
25 near the sill.

1 And then the small rail, there is a metal chain, a
2 beaded chain, or beaded cord, that fits over this wheel that
3 then also actuates or turns that wheel, which turns this rod,
4 which is a splined rod, has a slot in it. And that splined rod
5 or slot then will actuate or rotate each one of these slots or
6 veins so that you can change the angle of the vein in the
7 window blind itself.

8 Q. Were you able to determine who designed this particular
9 product?

10 A. When you say who, I can't tell you individually. But I can
11 tell you the corporation is Hunter Douglas who designed that
12 particular blind.

13 Q. Okay.

14 A. They designed it and manufactured it.

15 Q. Do you know when this particular blind design was sold?

16 A. That -- this blind was sold in 1995. I think in -- in
17 October or November of '95.

18 Q. And that's based on what information?

19 A. That's based on the testimony of various individuals that
20 I've had a chance to read. If I remember correctly, it was
21 Mrs. Davis, if I remember, who purchased the blinds for her
22 daughter's house. Her daughter lived at this address before
23 the Padillas. And I think her daughter's name was Mindy
24 Roberts, if I remember correctly.

25 Q. Did this particular blind come -- at least looking at and

1 examining it, did you notice if there was any warning signs
2 with respect to how this is going to be used in case children
3 were around?

4 A. No, I found no warnings on it whatsoever.

5 Q. And you also looked at some alternative designs, is that
6 correct?

7 A. That is correct.

8 Q. Can you explain to the Judge what alternative design you
9 looked at to this particular model?

10 A. Yes. I -- that's one of my assignments that I always
11 look -- do -- or I always assume as one of my assignments. Any
12 time I'm looking at an accident scenario, you always look to
13 see how that accident could be avoided. Is the product
14 defectively designed? And can the design be -- could the
15 product be designed differently so that it wouldn't be
16 defective, it wouldn't be unreasonably dangerous? This
17 accident -- could it be designed so this accident would not
18 have occurred?

19 Q. What did you find?

20 A. I found, yes, it could have been designed differently.
21 And --

22 Q. Was there an alternate design available at the time this
23 particular model was designed and sold, or at least at the time
24 it was sold?

25 A. Exactly. What is interesting is, many times you find that

1 the state of art is such that it could be designed differently.
2 But in this particular case, what I found very interesting is
3 that Hunter Douglas themselves, the manufacturer themselves,
4 had an alternative design which in my opinion was much safer,
5 and in my opinion also easier to use and actuate.

6 Q. Are you familiar with the PermAssure safety line?

7 A. Yes, the PermAssure safety system that Hunter Douglas had
8 developed before 1995 is a system that uses a wand instead of
9 the bead and fabric cord that actuates the same mechanism and
10 -- and actuates or works the blind in a very similar manner.

11 MR. SANTIAGO: May I approach, Judge?

12 THE COURT: You may.

13 BY MR. SANTIAGO:

14 Q. Showing you Plaintiff's Exhibit No. 5. Tell me what those
15 documents are.

16 A. This is a document that I received from plaintiff's
17 counsel, that he received from Hunter Douglas, the defendant in
18 this case. And it is schematics of how the -- the window blind
19 system works and how the perm -- PermAssure -- PermAssure
20 safety wand can actuate and manipulate this blind or very
21 similar vertical blind.

22 Q. Can you explain to the Judge very briefly how the two
23 compare? How is it that you could do the same things or the
24 same function with the wand versus the cords?

25 A. Yes, I will be happy to.

1 Q. You got two minutes.

2 A. The -- this particular blind has -- has two mechanical
3 functions. One is to move the slats open, so you can open from
4 the window or close the slats, so that the window is closed:
5 And in addition, the -- there is that function that allows the
6 slats to be rotated, so that you can have partial light, full
7 light, or no light.

8 And so we have basically two functions. One is on --
9 the subject line is controlled with a fabric cord, and that
10 moves the slats apart from each other, opening the slats or
11 opening the blinds. And if you pull in the opposite direction
12 they close.

13 The chain or the beaded system rotates the veins, or
14 the slats, and so that you can change the -- with leaving the
15 blinds closed, you can change the angle from the pretty much
16 vertical to pretty much horizontal. They -- using exactly the
17 same internal mechanism, which is very uniquely done, and --

18 Q. Page 7 of Exhibit 5. Can you look. Does that illustrate
19 anything you just explained to us?

20 A. On page 7. Are you talking about 9477?

21 Q. Yes.

22 A. 9477. The -- if you take and attach the -- the wand system
23 and remove -- you don't remove the cords. The cords still stay
24 inside. But what -- what you do remove is the external part of
25 the cords, so that the two looped cords are now no longer on

1 the blinds. And they can now be actuated with the wand
2 rotating or sliding.

3 So what you have done is remove the cords and now can
4 operate using the same mechanism, internal mechanism. But you
5 can now do the twisting motion by just simply rotating the
6 wand, or the transverse motion by moving the wand horizontally
7 right or left.

8 Q. Did the wand -- do you know if the wand -- when the wand
9 was designed and sold?

10 A. The wand was designed probably sometime in the late '80s or
11 early '90s. I know it was available for sale in 1995, in the
12 early part of 1995. So the wand, the PermAssure wand, was
13 available before this blind was sold by Hunter Douglas
14 themselves.

15 Q. Were you able to read any of the Hunter Douglas documents
16 with respect to how they were marketing this particular wand?

17 A. Yes. There was -- there was several Hunter Douglas
18 publications. One is a publication called Inside 2000, talking
19 about their 2000 model line. And it's on -- on that Bates
20 number 9508, where it says PermAlign and PT 2000 track systems
21 and accessories.

22 MR. SANTIAGO: Judge, can I approach?

23 THE COURT: You may.

24 MR. SANTIAGO: This is Exhibit 6, your Honor.

25 BY MR. SANTIAGO:

1 Q. I'm showing you what's been marked Exhibit 6.

2 A. And it's the same as what I have.

3 Q. Okay.

4 A. And you can see on page 9508, Bates No. 9508, in the upper
5 right-hand corner 9508, it says PermaShield -- PermAssure
6 Safety 1. The PermAssure Safety 1 completely replaces the
7 control chain and cord normally found on vertical blinds with
8 one easy-to-use wand. The wand provides both transverse and
9 rotational vein control, so you never need to think about which
10 chain or cord to pull. For children, the PermAssure option
11 provides added safety over corded verticals by keeping the
12 controls out of their reach.

13 Q. Okay. After reviewing the materials that you reviewed in
14 this case and having examined the vertical blinds that were
15 involved here and looking at the schematics of the Perma wand
16 and the advertising materials, based on your experience as an
17 engineer, as a scientist and as a reconstructionist, were you
18 able to reach any opinions with respect to how this accident
19 occurred?

20 A. That I have.

21 Q. And can you -- did you prepare a report with respect to
22 your opinions?

23 A. Yes, I prepared an eight-page report, which I sent to
24 plaintiff's counsel. And --

25 MR. SANTIAGO: May I approach, Judge?

1 THE COURT: You may.

2 BY MR. SANTIAGO:

3 Q. Showing you what's been marked as Exhibit 7. Can you tell
4 me what that is?

5 A. Yes, this is a copy of my report that I sent to plaintiff's
6 counsel regarding my investigation and analysis and my opinions
7 in this particular assignment.

8 Q. Are your opinions to a reasonable degree of scientific and
9 reconstructive certainty?

10 A. They are.

11 MR. WILLIAMS: I object to that. That's a compound
12 question. There are several issues here. Reconstruction is
13 one. The product design issues is another.

14 THE COURT: I understand. I understand that there are
15 a number of opinions at issue here. So on that basis, the
16 objection is overruled. You may proceed.

17 BY MR. SANTIAGO:

18 Q. Let's talk about your opinions on the reconstruction.
19 What -- what was your opinion with respect to how the accident
20 occurred?

21 A. It is my opinion, from analyzing all the data that I was
22 able to come up with -- and I have outlined what data that I
23 have used in my analysis -- is that Max, hearing his siblings
24 and his mother outside, he was in his room. He -- and, well,
25 we can see the outside picture that they were right below his

1 window.

2 He is not tall enough to look out the window to see
3 what the discussion was going outside. So he opted to climb up
4 onto the nightstand to look out the window. And as he's
5 looking out the window, the closed loop, which we saw very
6 clearly in the picture taken by the police the night of the
7 accident, was easy for him to get his head through. Obviously
8 not physically purposefully, but it's simply a physical fact or
9 phenomena of that particular design of the blind.

10 And as he's looking out the window, he slips off the
11 nightstand. And as he slips off, he ends up strangling himself
12 through that closed loop.

13 Q. And based on your review of the coroner's report, is that
14 consistent with her report that he strangled on one of the
15 cords?

16 A. That is correct. It is -- it is her opinion that he -- he
17 resulted dying from strangulation from the looped cord of the
18 window blind.

19 Q. And again, just for the Court, the basis of your opinion
20 that he died the way you had reconstructed?

21 A. The basis of my opinion is many fold. I -- I've used all
22 the data that I can gather and analyzed it and put it in a
23 sequence. That's what I do with all of my reconstructions, is
24 to determine beyond a reasonable degree of scientific certainty
25 what physically occurred and how it occurred. Obviously I am

1 relying on the coroner, the medical examiner. I am relying on
2 the police, the photographs. I am relying on the measurements
3 they took. I'm relying on the measurements I took.

4 I'm relying on studying the mechanics of the blind. I
5 am relying on looking at other -- other alternatives to the
6 design of the blind.

7 I'm putting all the data together in one, quote,
8 package and putting all the pieces together the best possible
9 way that I can put it together.

10 Q. Did you have a factual basis from an actual eyewitness who
11 saw exactly what happened?

12 A. In many cases you do have eyewitnesses that see the
13 accident scenario unfold. In this case I had no factual
14 eyewitness or no one was taking video of the accident scenario.
15 So I had no factual basis of an eyewitness who witnessed the
16 accident.

17 But I am basing my -- my opinions on all the bits and
18 pieces, all the facts, that I've outlined to you at this point
19 in time, the physical evidence that was -- was documented by
20 the police. And then I physically measured myself when I
21 visited the accident site, and I examined the blind in detail.

22 Q. Do you know what human factors is?

23 A. Human factors is the study -- yes, I do.

24 Q. Okay. Do you have any experience in applying human factors
25 principles?

1 A. Yes, I have quite a bit. I do not consider myself a human
2 factors expert per say, but I do have quite a bit of experience
3 using various aspects of human factors in my analysis.

4 Q. Did you bring any of those human factors experiences to
5 bear in this particular --

6 A. In -- in several aspects I did, yes, I --

7 Q. How did it help you?

8 A. Obviously anytime you -- you try to put your hands on as
9 much information as you can and bring it all together in -- in
10 a -- putting all -- as I call it, putting all the pieces of the
11 puzzle together.

12 Q. Did it help you in determining what Max's motivation would
13 have been?

14 A. Exactly. With -- with the commotion or hearing his
15 siblings outside and his mother outside, I am sure that led to
16 his wanting to see what was going on right outside his window.

17 Q. With respect to the corded vertical blinds involved in this
18 case, you indicated you are familiar with the workings of it
19 and you compared it to the PermAssure wanded version. Did you
20 reach an opinion with respect to whether the particular design
21 in this vertical blind that was involved in this case was
22 unreasonably dangerous?

23 MR. WILLIAMS: Your Honor, I object here. I'll
24 certainly cross-examine. But if we are offering that opinion,
25 there hasn't been any attempt to lay a foundation with this

1 witness.

2 THE COURT: This is all voir dire, so you may proceed.

3 MR. SANTIAGO: He has a basis, Judge. He's talked
4 about his examination of the particular product itself.

5 BY MR. SANTIAGO:

6 Q. Let me ask you this: Doctor, what's your background in
7 design and manufacture?

8 A. I've -- I've designed lots of products in the past myself.
9 I've taught engineering mechanics and engineering courses at
10 Ohio State. And I've taught -- in my mechanics courses I've
11 taught various aspects of design, what you should do when
12 you're designing products.

13 So I have quite a bit of product design. And that's
14 part of my area of expertise.

15 Q. Are there certain precepts in design, manufacture that you
16 apply across the board to different types of products?

17 A. To me -- the answer is yes. And to me, what I've always
18 taught in the classroom is safety is never an option. If there
19 is a way to design a product to be safer, you always will opt
20 to that -- that aspect.

21 Q. Are there any other considerations that you would give in
22 making an opinion like that, such as perhaps feasibility and
23 functionality?

24 A. You always look at -- to make sure the product is
25 functional. You always look at it that it's feasible. You

1 always look at it to be cost effective. You always look at all
2 the aspects of when it comes to design of any product.

3 You set out to do a job when you're trying to design a
4 product. And then you try to see, how can that job be
5 accomplished? There are a lot of different avenues. There
6 is -- and as I always say to my clients, there are a lot of
7 ways of skinning a cat. The problem is, a lot of them are
8 messy.

9 But, yes, there are a lot of ways of accomplishing the
10 end goal. And you look at all the different alternatives. And
11 you try to find out the one that is best, both cost wise,
12 effective, usefulness, all of the above.

13 Q. Drawing on your experiences with product development, do
14 you have an opinion with respect to whether this particular
15 product design was defective?

16 A. As -- as it was sold to -- to the Roberts, Mindy Roberts,
17 in my opinion it was defective. It was defective because it
18 was unreasonably dangerous because there was no need to have a
19 looped cord exposed for an accident that we had here occur.
20 There was -- there are alternatives. And actually, Hunter
21 Douglas themselves had an alternative to actuate the blind to
22 make it just as useful, just cost effective, and function in
23 just the same manner without having that danger.

24 Q. When you say, you -- you can't make safety an option, is
25 that based on some sort of engineering precept?

1 A. Yes. Almost every engineer will tell you that safety is
2 never an option. And I mention that in virtually every class I
3 taught at Ohio State. Safety is never an option. You don't
4 make -- you don't make safety an option. You incorporate it in
5 the product.

6 If it is cost effective, you incorporate it in the
7 product.

8 Q. With respect to this particular product, vertical blinds
9 you see here and examined in Exhibit 9. There were also
10 alternative designs that made it, I guess, safer, or --

11 A. Absolutely.

12 Q. Why wouldn't that suffice to make this particular product
13 safe?

14 A. If -- if it was sold with the PermAssure wand as Hunter
15 Douglas had available in 1995, in my opinion this accident
16 would not have occurred. We would not be here in this
17 courtroom today.

18 Q. Do you know if Hunter Douglas was aware of the
19 strangulation risk caused by the corded window blinds?

20 A. The answer is, from the deposition testimony and other
21 information I gathered from plaintiff's counsel that they
22 gathered from Hunter Douglas, the answer is, yes, they were
23 aware. The Consumer Product Safety Commission, the CPSC, had
24 been tracking window blind deaths due to children for quite a
25 few years. And there were quite a few deaths that had occurred

1 before this blind was manufactured and sold.

2 Q. Have you ever testified or consulted with the Consumer
3 Protection Safety --

4 A. Yes, I've had several occasions. The CPSC, the Consumer
5 Product Safety Commission, has -- has asked me to attend quite
6 a few different hearings and meetings involving not window
7 blinds but other products. And I've even been given an
8 honorarium from the Consumer Product Safety Commission to spend
9 a day with their staff, it was in 1997, to talk about my
10 observations and calculations and analysis when it came to a
11 different product, but safety issues that the CPSC was looking
12 at.

13 Q. Now, there were other blinds available prior to the
14 vertical blinds. There were the horizontal blinds, is that
15 correct?

16 A. Right. Horizontal or some people call them Venetian
17 blinds, yes. But those actuate when it comes to a looped cord
18 or changing the angle of the -- of the horizontal slats instead
19 of the vertical slats in a similar manner. And, yes. They --

20 Q. Was the risk posed -- was there any risk posed by those
21 blinds as well?

22 A. Exactly the same risk, exactly the same risk, because the
23 mechanism is somewhat the same. Instead of sliding the blinds
24 apart or together, horizontal blind or Venetian blind goes up
25 and down. And instead of rotating the veins, or horizontal

1 blind, you rotate the slats.

2 And so the rotation and the opening are controlled
3 exactly the same manner either with a wand or with cords. And
4 -- and Hunter Douglas does manufacture horizontal blinds in
5 addition to the vertical blinds. And the problems with the
6 corded -- the looped cords have existed in both the horizontal
7 and the vertical blinds for years.

8 Q. Did you perform any functionalities studies on this
9 particular window blind?

10 A. The -- no, the answer is no. And the reason I didn't is
11 because Hunter Douglas had already done that. So there was no
12 need for me to spend my client's time and money to do something
13 that Hunter Douglas had already done.

14 Q. Did you study how they function at least?

15 A. Absolutely. I studied the mechanisms of both the corded
16 control or in the wand control to determine whether they both
17 function in the same manner. But there was no need to do cost
18 analysis or function studies because obviously Hunter Douglas
19 had already perfected the wand by the time of the manufacture
20 of this particular.

21 So it was no need for me to, quote, rediscover the
22 wheel.

23 Q. Real quick, within a minute, was -- what was the mechanism
24 of death in this particular case that you were able to reach?

25 A. According to the medical examiner, it was strangulation.

1 It was death due to strangulation.

2 Q. Did you -- did you reach your own opinion with respect to
3 the cause of death in this case?

4 A. That I have, yes.

5 Q. What is it?

6 A. Strangulation due to the child being encapsulated around
7 the neck with the closed loop that was hanging down from the
8 blind. It's part of the actuation mechanism of the blind.

9 Q. Did you -- when you studied this particular blind, did you
10 determine the weight capacity of the cords, determine whether
11 it could actually strangle someone the size and weight of Max?

12 A. Yes. Max weighed 52 pounds at the time of his death. And
13 the answer is, yes.

14 Q. I'm not sure if you answered this, but did you have an
15 opinion with respect to whether this product, based on your
16 experience and your examination of it, is an unreasonably
17 dangerous product because of the corded loops?

18 MR. WILLIAMS: Same objection to the lack of
19 qualifications and foundation. I'll cross on that.

20 THE COURT: Noted.

21 You may proceed.

22 BY THE WITNESS:

23 A. Yes, I have come to a conclusion that it is unreasonably
24 dangerous and a defective product because you can get the same
25 functionality at virtually the same cost with a different

1 mechanism, namely the wand control, instead of a looped cord
2 control.

3 BY MR. SANTIAGO:

4 Q. Did you have an opinion as to whether Hunter Douglas could
5 foresee this strangulation death involved in this case or any
6 kind of danger involved in strangulation of small children with
7 respect to this product?

8 A. The answer is, yes, because all the testimony I saw from
9 the Hunter Douglas people is, they were notified by the
10 Consumer Product Safety Commission long before the manufacture
11 and sale of this blind that there were deaths, hundreds of
12 them, occurring from closed-loop window covering devices such
13 as vertical and horizontal blinds.

14 Q. Just two more questions. Do you have an opinion or reach
15 an opinion with respect to whether Max's parents were in any
16 way contributory causes to his demise?

17 A. And I have reached a conclusion.

18 Q. What's your opinion?

19 A. That they were not causes or contributory to this accident
20 whatsoever. Because the blind to an untrained eye or someone
21 who is not aware looks very benign. I mean, soft nylon cord or
22 very flexible metal cord or chain. There appears to be no
23 danger in a window blind sitting on the wall.

24 And so to them, sending Max to his room was like a
25 safe haven, appeared to be totally benign and an accident-free

1 area. So I put no fault to the -- to the mother or father
2 whatsoever.

3 Q. I think you indicated earlier too that upon examining the
4 blind involved here, you found no warning labels or use labels?

5 A. I found no labels on it whatsoever.

6 Q. Do you -- in your research and in all the documents that
7 you reviewed, including the Hunter Douglas materials that
8 you -- were you able to determine whether or not Hunter Douglas
9 sent out with this particular item a warning on strangulation
10 risk posed to small children?

11 A. I found no documentation whatsoever for the sale of this
12 particular blind to -- to Mrs. Davis or Mindy Roberts, whose
13 house it was being installed, any type of notification that
14 there was a danger using this particular blind.

15 Q. Based on your investigation in this case and you reviewed
16 the depositions, were you able to determine whether Mrs. Davis
17 was ever offered the alternative safer design with the Perma --

18 MR. WILLIAMS: I object to that. There is no
19 foundation, and it's hearsay.

20 THE COURT: You may proceed.

21 BY THE WITNESS:

22 A. I have read an affidavit that Mrs. Davis has prepared,
23 stating that Hunter Douglas or their representatives never
24 indicated there was any other design other than this one. And
25 if she was given an option, at least according to her

1 affidavit, her sworn affidavit, if she was given an
2 alternative, she would have chosen the wand instead of the
3 looped cords.

4 MR. SANTIAGO: Your Honor, how much time do I have?

5 THE COURT: You have about a couple minutes if you
6 want to wrap up.

7 MR. SANTIAGO: Okay.

8 BY MR. SANTIAGO:

9 Q. Now, all of your opinions, are they based primarily on your
10 engineering background?

11 A. They're all based on scientific and technical background,
12 yes. Years in mathematics and physics and chemistry, all of my
13 science and technical background, yes.

14 Q. And the methodologies that you use in reconstructing cases?

15 A. That is correct. And my methodology, as I said, is given
16 very clearly in my paper, which was published by the American
17 Society of Mechanical Engineers.

18 MR. SANTIAGO: I don't have any further questions at
19 this point.

20 THE COURT: Okay.

21 MR. WILLIAMS: May I start, your Honor?

22 THE COURT: Yes, you may.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Dr. Wright, good morning. How are you?

1 A. I'm fine. Thank you.

2 And it's Mr. Williams?

3 Q. It is Mr. Williams, just as it was when we spent time
4 together in Charlottesville. It's been a couple years ago now.

5 I have some questions, as you might imagine. And I am
6 going to start out at the beginning with the report that you
7 issued in this case, which is dated March 18, 2011. I've got
8 the first page of that on the projector.

9 Are you able to see the monitor?

10 A. I can see it very clearly right in front of me, yes.

11 Q. And I have highlighted there the -- at the bottom of the
12 first paragraph, your summary of what Mr. Jauregui had asked
13 you to perform in working on this case, correct?

14 A. That is correct.

15 Q. Can you read that please?

16 A. This is a letter to Mr. Jauregui stating: You have
17 requested that I do a reconstructive analysis of the accident
18 scenario, determine what happened during that accident, and
19 determine what caused and/or contributed to that accident.

20 Q. Okay. That's what you set out to do.

21 A. That is what I set out to do.

22 Q. So basically you, as you described it -- and we'll talk
23 about it in a minute. You -- your background is largely in and
24 your activities in your forensic consulting business have
25 largely been devoted to accident reconstruction. You spend a

1 lot of time doing that?

2 A. That is correct, I am.

3 Q. And in the summary that you just read, you have indicated
4 you were asked to reconstruct the accident, determine what
5 happened during it, which reads to me as another way of saying,
6 reconstruct the accident, and what caused or contributed to it,
7 correct?

8 A. That's correct.

9 Q. The factors that came into play.

10 A. That's correct.

11 Q. And in this case, you determined that Max was in his
12 bedroom, apparently mounted his nightstand in an attempt to
13 look out the window after having just come in and knowing that
14 his sister was still out there and some other friends. And
15 that in some way or another in the course of trying to look out
16 the window, using the nightstand as his platform, he must have
17 lost his balance and some way or another fell into the loop of
18 the nylon cord on these window blinds, correct?

19 A. I don't know if he -- if -- if I wanted to use the word,
20 fell into it. As you can see in the police photograph, the
21 loop is pretty open. There is a lot of cross-sectional area.
22 And so he might have stuck his head, not overtly, but
23 inadvertently stuck his head through that loop looking out the
24 window.

25 And then when he slipped, obviously if the loop is

1 already around his head, because it -- it's so easy, as you can
2 see in that photograph, for him to get his head through there,
3 that as he slipped, then that's what caused strangulation.

4 Q. Okay. And that's what you concluded and testified to as
5 the reconstruction of this accident, correct?

6 A. That is correct.

7 Q. Okay. There is no mention in that description at least of
8 an evaluation of the design of any products, is there?

9 A. I think that is -- at least in my opinion, and every time I
10 -- I use an assignment, is if there is a product involved, I
11 always analyze the product to determine whether it's defective
12 or not defective. And I've worked on lots of products on
13 behalf of defendants in addition to lots of products on behalf
14 of plaintiffs.

15 So I think the last sentence -- at least in my
16 opinion, the last sentence clearly states that I'm looking at
17 the product to determine if there is any defective nature that
18 would cause or contribute to that accident scenario.

19 Q. Well, in any event, we know that you did attempt to go on
20 and do that here. We'll talk about that in a minute. But the
21 initial summary of what you were retained to do is contained in
22 this first paragraph in the last sentence.

23 A. I think the last sentence clearly indicates that I will
24 look at the product because I want to determine what caused
25 and/or contributed to that accident.

1 Q. Let's look at your background for a few, if we could.

2 A. Sure.

3 Q. I received for the first time the updated CV. And frankly
4 I didn't have time to side-by-side it with the one that we have
5 been provided with in this case. So if there are any material
6 changes or additions that I skip over in my questioning right
7 now, let me know. Okay?

8 A. Okay. I think the only thing that probably were added in
9 the last two -- I think you took my deposition in either was it
10 2011 or 2012? I can take a look.

11 Q. I saw you because I -- I like to answer a question every
12 now and then myself -- it was April 19, 2011.

13 A. Okay. So in those two years, I -- I have been retained --
14 I don't know if retained is the right word. But I have been
15 working with both Grail Engine Technologies and H1 Technologies
16 in addition to my consulting work. I guess that's still part
17 of consulting. But it's as -- as part of the design team of
18 each of those entities.

19 Q. Okay. So you mentioned that you got your Ph.D. from Ohio
20 State University in 19 --

21 A. '75.

22 Q. -- '75.

23 From '67 to '75, you were studying there. And then
24 you immediately began teaching at the university for the next
25 three years --

1 A. That's correct.

2 Q. -- '78, correct?

3 A. That's correct.

4 Q. You then went off to Ohio Wesleyan for a year?

5 A. That's correct.

6 Q. Returned to Ohio State --

7 A. In '79.

8 Q. -- where you were the assistant director of admissions for
9 a year, is that -- excuse me --

10 A. No, that -- I was assistant director of admissions at Ohio
11 Dominican College for one year.

12 Q. Okay. When you came back to Ohio State, you were in the
13 academic dean's office, is that --

14 A. Right. I was in the college of engineering. I was
15 assistant to the dean in the college engineering.

16 Q. And you were -- remained in Ohio State until 1987, is
17 that --

18 A. That's correct.

19 Q. Meanwhile, while you were there, in 1978 you formed an
20 enterprise to operate a retail store, is that correct?

21 A. That is correct.

22 Q. And that was Train Station Enterprises, Inc.?

23 A. That is correct.

24 Q. What was the nature of that business?

25 A. The nature of that business was retail operation that sold

1 model trains.

2 Q. Okay. And in 1989, did the nature of the business, form of
3 that business, change?

4 A. No. What happened was, the manager of the store -- I had a
5 manager who managed or ran the store for -- for myself and
6 other individuals who invested in the store -- wanted to
7 purchase the store from us. So in -- we allowed -- in 1989 we
8 allowed him to purchase the store. And at that time we took
9 the purchase price from the store and formed a manufacturing
10 company.

11 Q. Okay. And I'm putting on the display screen now the second
12 page of the new CV that was attached today as Exhibit 1.

13 A. That's correct.

14 Q. And that indicates 1989 you formed Quality Wright -- Wright
15 spelled the same way as your last name -- Corporation, is that
16 correct?

17 A. That is correct.

18 Q. And what was the nature of the business of Quality Wright
19 Corporation?

20 A. That was a company that manufactured model train and model
21 train components to the retail market. We had -- we sold to I
22 think about seven or eight different distributors around the
23 world. And those distributors would sell to hobby shops and
24 other retail outlets, both online and in retail stores.

25 Q. And that's a business that you maintained an interest in

1 for approximately 21 years --

2 A. That is correct.

3 Q. -- 2010?

4 A. That is correct.

5 Q. And what happened in 2010?

6 A. A company called Smokey Valley Railroad Products purchased
7 train station products from us. So all the injection molds,
8 all of the inventory, all of the design work that we had
9 amassed, was sold to Smokey Valley Railroad Products at that
10 time. And they were out of Oxford, Mississippi.

11 Q. Then in addition, this is still while you were at Ohio
12 State --

13 A. That's correct.

14 Q. -- you formed a consulting firm, correct?

15 A. That's correct.

16 Q. And was that in about 1982?

17 A. No, actually in '85 when we formed Lexpert, Inc.

18 Q. Okay. What were you doing from 1982 to '85 in the way of
19 consulting, if anything?

20 A. I was -- from '82 to '85, before we formed our company, I
21 was just consulting on my own. I got a phone call in 1982 from
22 an attorney in Dayton, Ohio, asking if I would take a look at a
23 riding lawnmower to determine what happened in an accident
24 scenario involving a riding lawnmower. And that was my first
25 consulting assignment.

1 Q. So three years later, 1985, you incorporated under the name
2 of Lexpert, Inc., at that time?

3 A. That's correct.

4 Q. And then you remained at Ohio State until 1987, is that
5 correct?

6 A. That's correct.

7 Q. You left at that time. And since then have you devoted
8 your time pretty much entirely to your consulting business as
9 well as your model train business?

10 A. Well, in the last few years, I have devoted quite a bit of
11 time to both Grail Engine Technologies and H1 Technologies.
12 But, yes, I would say more than half my time from '85 on was
13 spent with Lexpert, Inc., in the consulting area.

14 Q. Okay. Now, in addition you indicated that you have
15 published some papers as well.

16 A. That is correct.

17 Q. You've been asked to speak at two seminars, present papers
18 at two seminars, that you outlined for us, one in London and
19 one in Montpellier, France, is that --

20 A. That's correct.

21 Q. -- correct?

22 And those two were respectively in 1994, I believe, in
23 London, is that --

24 A. That is correct.

25 Q. -- one I'm pointing to here. Accident --

1 A. That's correct.

2 Q. -- reconstruction -- is that the accident reconstruction
3 dynamics of ATV accidents?

4 A. That's correct.

5 Q. Okay. And then in 1996, the Montpelier presentation, is
6 the one that we see at the bottom of your CV, accident
7 reconstruction and reconstructive analysis, is that right?

8 A. That is correct.

9 Q. Now, those two seminar papers are contained in a list of
10 publications that begin on the preceding page, is that correct?

11 A. That is correct.

12 Q. And with respect to those publications, am I correct, Dr.
13 Wright, that they all deal with either ATV and ATV accident
14 reconstructions or some subject related to astronomy?

15 A. No. The last paper deals with -- with all kinds of
16 different accident scenarios.

17 Q. So the Montpelier went beyond ATVs and dealt with accident
18 reconstruction in a more general sense?

19 A. In lots of different areas.

20 Q. Okay. With that qualification, is my characterization
21 accurate? The rest of your publications deal in some way
22 either with ATVs or astronomy?

23 A. Yeah, I would say. I mean, obviously I am looking at the
24 physics of all of those aspects, the -- this -- the technical
25 aspects. But, yes, I would agree the subject matter would fall

1 into -- mainly in those areas.

2 Q. Okay. Now, you've never published in the area of product
3 design, have you?

4 A. I have designed lots of products, but I never published
5 anything in product design.

6 Q. My question, publications. Have you ever published on the
7 subject of product safety?

8 A. No, I have not.

9 Q. Have you ever published in the area of human factors?

10 A. No, I have not.

11 Q. Have you ever published in the area of bio mechanics?

12 A. No, I have not.

13 Q. Or ergonomics?

14 A. No, I have not.

15 Q. As you indicated earlier, you did not just do an accident
16 reconstruction here. We'll talk about that in a little while.
17 But you also performed an analysis or evaluation of what you
18 considered to be the design of this product and whether it was
19 unreasonably dangerous or defectively designed, to use your
20 terminology. Is that correct?

21 A. I have done that analysis, yes, that is correct.

22 Q. Okay. You were never asked to consider whether Hunter
23 Douglas acted negligently or without reasonable care in this
24 case, were you?

25 A. I don't remember that question being posed to me.

1 Q. If I were to pose that question to you today, would you
2 agree with me that you were not asked in this case to express
3 any opinion whatsoever with respect to whether Hunter Douglas,
4 my client, acted negligently or without reasonable care?

5 A. When you use those terms, those get into what I consider
6 legal terms. I like to -- my area is math and science, the
7 technical aspects. I like to look at a product in -- in a
8 technical manner. And I can tell you whether -- and I might be
9 using the word negligent in a nonlegal manner.

10 I think that they were negligent for going ahead and
11 selling a product when they had a better and safer alternative
12 in -- in their own repertoire, so to speak, you know, that they
13 have already done research and have perfected and manufactured
14 a safer product. And to me that's negligent.

15 But whether that falls into the legal term of
16 negligence I do not know.

17 Q. You weren't asked to evaluate that or render an opinion as
18 to whether Hunter Douglas was negligent or, if that's too legal
19 a term, acted without reasonable care in this case, were you?

20 MR. SANTIAGO: Asked and answered, Judge.

21 THE COURT: You can go ahead and answer.

22 BY THE WITNESS:

23 A. I guess not. I mean, I don't remember being asked that
24 particular question.

25 MR. WILLIAMS: Your Honor, I have a binder with the

1 depositions in it for your use. May I approach?

2 THE COURT: You may.

3 MR. WILLIAMS: Actually, your Honor, this is the one
4 for you with all four witnesses that we are discussing today
5 and tomorrow. And pages 210, 211, of Dr. Wright's deposition.
6 BY MR. WILLIAMS:

7 Q. Dr. Wright, I'm just going to ask you to take a look at --
8 I am going to take advantage of the monitor, the camera here --
9 your deposition testimony taken, as we mentioned earlier, on
10 April 19, 2011, at pages 210 and 211, where I asked you the
11 questions that I am addressing here.

12 Looking down at the bottom of page 210, please read
13 along with me and make sure I read correctly. My question:

14 You have not been asked in this case to express an
15 opinion as to whether Hunter Douglas acted negligently or
16 without reasonable care, have you? You simply addressed your
17 definition of what constitutes a defective product and then the
18 accident reconstruction?

19 And your answer was: Right. I would leave that up to
20 the attorneys I'm working with, whether they want me to look at
21 negligence. I was simply looking at what I stated in my first
22 paragraph of my report.

23 Question: But you haven't looked at whether they were
24 negligent or not?

25 Answer: I would agree with that, right. I have not

1 looked at it.

2 Was that your testimony on April 19 --

3 MR. SANTIAGO: I object.

4 BY MR. WILLIAMS:

5 Q. -- roughly two years ago?

6 A. That is correct.

7 MR. SANTIAGO: My objection is, the first question was
8 compound question. We don't know what he was answering to.

9 THE COURT: Overruled.

10 BY MR. WILLIAMS:

11 Q. Similarly, Dr. Wright, you were never asked in this case to
12 look at the adequacy of the warnings that were provided with
13 these blinds or were not provided, correct?

14 A. No. Since there were no warnings -- at least I could not
15 find any warnings in all the testimony I could see. There were
16 no warnings issued -- I was never asked to address that
17 particular subject about warnings.

18 Q. Did you ever review any testimony indicating that these
19 blinds would have gone out with warning hangtags on the cords
20 themselves?

21 A. I do not know one way or the other. All I know is from the
22 testimony that Mrs. Davis gave and Mindy Roberts gave, that
23 they were unaware -- at least they don't remember any warnings
24 or options whatsoever.

25 Q. In fact, they didn't recall one way or the other, correct?

1 A. That is correct.

2 Q. So they didn't recall -- my question to you once again was
3 whether you recall there being other testimony, and in
4 particular from the Hunter Douglas personnel, that there would
5 have been hangtag warnings that would have gone out on the
6 cords of these blinds in 1995 when they were sold. Do you
7 remember --

8 A. I remember -- I remember testimony from Hunter Douglas
9 people.

10 Q. Okay. In any event, you were not asked to look at the
11 sufficiency of warnings, the issue of whether adequate warnings
12 were provided in this product, or do anything to analyze the
13 question of warnings in this product. Is that a fair
14 statement?

15 A. As I stated before, since there were no warnings that I
16 could see or that were ever delivered with the product, I was
17 never asked to address the subject of warnings.

18 Q. Okay. Regardless of reason, that's not something you
19 looked at?

20 A. I have not looked at warnings in this particular
21 assignment.

22 Q. Likewise, there isn't any mention in your report of any
23 discussion whether Hunter Douglas breached any warranties to
24 the purchasers, Ms. Davis or Ms. Roberts, is there?

25 A. I -- I did not address that whatsoever one way or the

1 other.

2 Q. Okay. Now, what you did do as you have mentioned and
3 discussed with Mr. Santiago is, give some opinions as to the
4 what you referred to as the defective design of these window
5 coverings, correct?

6 A. That is correct. I -- I did look at the design of the
7 window coverings or the blinds themselves. And -- and I
8 have -- have voiced an opinion in that regard.

9 Q. Okay. At one point there was a claim based on strict
10 products liability in this case. And when that was the case,
11 you rendered your report and expressed some opinions as to
12 whether in your opinion these blinds were defectively designed
13 or unreasonably dangerously designed. I think you used both of
14 those terms somewhat interchangeably.

15 A. I think I used both of those terms in my report.

16 Q. Okay. Now, you hold yourself out as an expert in force
17 analysis and dynamics, right?

18 A. That is correct.

19 Q. There is no degree in that subject?

20 A. I do -- I should take a half step back. I do not know of
21 any institutions that offer a degree in that area. But I am
22 not saying that there aren't any. I have not examined all of
23 the institutions in this country.

24 Q. I'll take that half step back for you. You are not aware
25 of any institutions that offer bachelors, masters or doctorates

1 in force analysis and dynamics, are you?

2 A. No, I am not.

3 Q. There is no professional association or organization of
4 individuals who work in this field, is there?

5 A. I mean, I know a lot of people now use that area of
6 expertise as their area of expertise. But I do not know of any
7 society or -- or group of -- or association of individuals that
8 -- that bring that together in that regard.

9 Q. Okay. And in fact, it's a trend that you made up after you
10 started your consulting practice, and which you told us at
11 least some other individuals that work in the area of accident
12 reconstruction, as you do, have liked your phrase, your label.
13 And they picked up on it themselves.

14 A. That is correct. It is -- it's -- to me the reason I
15 started using that and other individuals use it is, it offers
16 or at least allows the person whom they are working with a
17 knowledge that they have much more scientific and technical
18 background than just accident reconstruction. They have
19 abilities to analyze much deeper and much more clearly in
20 physics and mathematics, because obviously accident
21 reconstruction is a study of, as I said, forces and motions.
22 And obviously any velocity or motion is a differential
23 equation.

24 So it's math and physics that are being involved in
25 every accident reconstruction.

1 Q. And it's really your accident reconstruction work and your
2 accident reconstruction expertise that you are trying to
3 describe with a what in your opinion is a better, more specific
4 label, when you use the term force analysis and dynamics?

5 A. That is correct.

6 Q. That's -- that's your accident reconstruction summary of
7 what you do.

8 A. That -- it's more than just accident reconstruction.

9 It's -- it is bringing my technical background, my experience
10 and my education, into play with more than just running a
11 computer program or taking a course like at George Washington,
12 Northwestern University or something along those lines.

13 Q. Okay. Now, we've seen your CV and your list of
14 publications. But let's make a couple things clear. You never
15 published in any peer review publication an article on the
16 design or safety of any household product, have you?

17 A. No, I have not published anything in that regard.

18 Q. More specifically, you never published a course with
19 respect to the design or safety of corded window coverings, is
20 that correct?

21 A. That is correct, I have not.

22 Q. The ATMs and the astronomy and the one overall accident
23 reconstruction paper that you presented at Montpellier are the
24 extended publications in professional peer review literature,
25 correct?

1 A. I would agree with that.

2 Q. You don't have any experience with the window covering
3 industry prior to retention in this case, except for the
4 possibility of one or two or three prior cases related to
5 window coverings, correct?

6 A. I have worked on two or three window covering assignments
7 in addition to this particular assignment.

8 Q. Okay. Specifically though, when we took your deposition
9 and you were asked about that, you couldn't recall the nature
10 of any of those cases, correct?

11 A. I could recall that they were all horizontal blinds. None
12 of them were vertical.

13 Q. So this was the first case in which you were working with a
14 vertical blind with the continuous loop operating system,
15 correct?

16 A. That is correct.

17 Q. And in particular, you couldn't recall the details of any
18 of the other cases. You only recall one of them you thought
19 was venued in Oklahoma somewhere?

20 A. That is correct. I remember one was -- had the -- the
21 blind had no label on it. And -- and I know that the attorney
22 I was working with never filed suit because he didn't know who
23 the defendant would have or could have been.

24 Q. Okay.

25 A. And I know my deposition testimony has never been given in

1 any window covering case.

2 Q. Finally, you never designed product or any component used
3 to operate a window blind, have you?

4 A. Well, I have worked on gears. I have done gear work.

5 Q. If they were used in the manufacture or design of a window
6 blind, tell me about them.

7 A. Well, the gears -- there are gears used in window blinds.
8 I mean, obviously I have not manufactured a gear for window
9 blind, but I have worked on design of gears before. And gears
10 are used in window blinds. So --

11 Q. My question was specific: Have you ever designed a window
12 blind or window covering product or any component that was
13 intended to be used as part of a window blind operating system?

14 A. For -- I never designed anything for manufacture of a
15 window blind.

16 Q. Okay. Anything for anyone else that was ever put to use,
17 to your knowledge, in a window blind, correct?

18 A. Well, as I said, I designed gears. And I know gears are
19 used in the window blinds. But I don't know if any of my gears
20 ended up in window blinds. That I -- someone might have
21 jerry-rigged one of them at some point in time.

22 Q. If they have, it was without your knowledge, correct?

23 A. That's correct.

24 Q. You didn't get paid for it, correct?

25 A. I got paid for my gears, but I don't know if I got paid for

1 putting it in a window blind.

2 Q. Now, you used to teach, correct?

3 A. Yes, I taught for quite a few years.

4 Q. Have you ever taught any course in which the focus was on
5 product safety?

6 A. I always talk about product safety in the course I taught.
7 But none of them were specific on product safety.

8 Q. In fact, you never even taken a formal course in product
9 safety throughout your academic career, is that correct?

10 A. That is correct. I have not. I don't even know -- maybe
11 some institutions have courses in product safety. I know Ohio
12 State didn't in the college engineering. But there might be
13 some institutions that have course in product safety. I'm not
14 aware one way or the other.

15 Q. You're not sure whether any --

16 A. I am not sure.

17 Q. -- colleges, universities across this country offer courses
18 that focus on in particular safe design of consumer products?

19 A. There might be. I am not aware one way or the other.

20 Q. Okay. And since you've been consulting, Dr. Wright, with
21 respect to your consulting and testifying practice, less than
22 ten percent of your cases have involved what you would call
23 household products.

24 A. I would agree with that, yes.

25 Q. Now, you mentioned a minute ago the fact that the other

1 cases that you might have worked on, the specifics of which you
2 can't recall, involving window blind coverings -- if you did
3 work on them, they were horizontal products, not vertical
4 products, correct?

5 A. I know this is the first vertical product.

6 Q. Now, there is a fundamental difference in how the cords
7 operate on a horizontal blind or window covering as opposed to
8 a vertical blind, correct?

9 A. I would disagree with that.

10 Q. Okay. Let me ask you, with respect to -- let's take your
11 standard set of Venetian blinds, one-inch mini blinds, that
12 have a two-cord cord coming out of the headrail -- excuse me.
13 That cord is used to raise and lower the bottom rail of those
14 blinds, correct?

15 A. That is correct.

16 Q. And in fact, we're all familiar with it. You typically
17 take the cord. You pull it down. And if you want to have the
18 bottom rail stay at something other than sitting on the
19 windowsill, you cock the cord to the left or the right. And
20 that engages a locking mechanism, and the blind stays where you
21 left it.

22 A. There is a pinch roller in there.

23 Q. Okay. And with respect to the two cords that you are
24 holding on to raise and lower, those are not typically used to
25 raise and lower the blinds by means of pulling on one or the

1 other. You're holding on to both of them together, correct?

2 A. That is correct.

3 Q. With respect to a vertical blind of the type that we have
4 here, the two functions that you described, both the opening
5 and vertical blinds can be parted from the middle, or they can
6 go entirely left to right, or vise versa, correct? Yes?

7 A. The answer is, yes. I mean, it's according to the -- that
8 particular blind. That is correct. Some of them open and part
9 in the middle, and some open or part from one side or the
10 other.

11 Q. Those functions involve a moving of one direction of the
12 cord in a continuous motion. In other words, you don't pull on
13 the two sides of the nylon cord. You pull on one, and the
14 blinds traverse one way. And you pull on the other cord, and
15 they traverse back the other way, correct?

16 A. If you're using a corded or closed-loop system.

17 Q. That's what we're talking about.

18 A. Yes.

19 Q. And similarly with respect to the tilt of the veins or the
20 slats, which is in this case at least operated by the metal
21 beaded chain, same thing. That's a continuous loop on that
22 chain that you pull one of those directions of loop in one
23 direction to open, and the other one to close, correct?

24 A. Well, the same is true on a horizontal blind. If it's a
25 corded system, it is a closed loop that -- that you change the

1 angle slats. And it's rotated either for or after the --

2 Q. There are some horizontal systems that use that. On
3 vertical systems, though, if there is a chain or a cord to
4 operate the tilt of the slats, that's always a continuous loop,
5 what we call, correct?

6 A. That's correct.

7 Q. In other words, you can't break it apart or -- and have the
8 blinds still function?

9 A. No, it's a continuous loop. And it's a -- of the ones that
10 are corded on a horizontal blinds, at least the ones I looked
11 at previously, it was a continuous loop to change the --
12 because it would feed up and feed back down.

13 Q. Okay. Now, Dr. Wright, you haven't done any comprehensive
14 review of incidents either involving Hunter Douglas blinds
15 generally or vertical blinds in particular or even other
16 manufacturers' products in preparing to testify in this case,
17 have you?

18 A. As I told you, the answer is, I -- I did not do that for
19 the reasons I previously stated to Mr. Santiago.

20 Q. Okay. The one thing you did look at, you looked at a
21 November 2004 report that summarized a number of window blind
22 strangulation incidents between the years 1996 and 2002,
23 correct?

24 A. That's correct.

25 Q. Do you have any recollection ability to summarize how many

1 of those products for example were vertical blinds?

2 A. I do not remember the ratio. I remember vertical blinds
3 were mentioned in that summary. But I do not remember the
4 ratio.

5 Q. Same question. Do you have any recollection or information
6 as to how many of the products summarized in that report
7 involved ones manufactured by my client, Hunter Douglas?

8 A. I do not remember --

9 Q. Okay.

10 A. -- the ratio.

11 Q. You familiar with Mr. Jankoski of Hunter Douglas?

12 A. Yes, I remember reading his deposition.

13 Q. Okay. And you are familiar if he was one of the
14 individuals involved with the Window Covering Manufacturing
15 Association that participated in that study of strangulation
16 incidents between 1996 and 2002?

17 A. I remember -- I don't remember in detail. I have not
18 reviewed that recently. I reviewed it before I wrote my report
19 but I have not reviewed it recently.

20 Q. So you don't recall the details of his involvement.

21 A. I remember the name and that he was employed by your
22 client. But I don't remember the exact aspect of what he did
23 or did not do in that time period.

24 Q. Okay. You haven't done any analysis of strangulation
25 incidents on window blinds, Hunter Douglas or otherwise, prior

1 to the manufacture of these blinds in 1995, have you?

2 A. I have looked at the Consumer Product Safety Commission
3 analysis. I didn't do any myself because I was relying on the
4 CPSC materials.

5 Q. And have you evaluated those materials of the CPSC to
6 determine, for example, how many vertical blind incidents there
7 were before these blinds were manufactured in 1995?

8 A. I -- I did not look at the ratio. I simply looked at
9 whether they were closed-loop incidents. And that is to me
10 notification that there is a danger when you have a closed
11 loop.

12 Q. Okay. We'll talk about the notification of that danger in
13 a minute. Have you done anything to try to analyze how many
14 incidents had occurred on Hunter Douglas blinds before these
15 blinds were manufactured in 1995?

16 A. I looked at the manufacturing of window covers all in one
17 fell swoop, because they -- to the consumer it doesn't matter
18 who manufactured. To the consumer it's important of what --
19 what the dangers are and do the dangers exist and can the
20 dangers be alleviated, and can a safer product be manufactured
21 that results in the same function and usefulness of the
22 product.

23 Q. Okay. Now, in this case, as you have already indicated, in
24 fact Hunter Douglas offered a -- an alternative design of this
25 vertical blind product that did not involve any cords or chains

1 in 1995. And that was the PermAssure wand, correct?

2 A. That is correct.

3 Q. In fact, you've seen internal Hunter Douglas
4 correspondence. You've seen marketing, promotional materials
5 that make it very clear that that wand was developed and
6 marketed at least in part as a device to make window coverings
7 used in rooms with children safer for children by eliminating
8 the cords and chains, correct?

9 A. I would agree with that statement.

10 Q. So there is no dispute in this case before 1995, when these
11 blinds were manufactured, the general risk of strangulation on
12 corded window coverings, if they were accessible to children
13 and children were not supervised adequately, that was a risk
14 that the industry and specifically my client was in the process
15 of addressing, correct?

16 A. That is a good question. If -- if your client -- if your
17 client is aware of the dangers, which they obviously were in
18 the literature they put out in developing this product, why did
19 they continue to make available or sell products that were
20 dangerous and defective? And that is -- I mean, obviously you
21 have to ask your client that question. I can't answer that
22 question.

23 Q. I understand you are here and you like to criticize that if
24 you are allowed to. My question to you is, there is no
25 question that the design of PermAssure wand, to take the

1 example that we are involved with here today, was in large part
2 in response to strangulation risk that Hunter Douglas knew
3 about well before 1995, correct?

4 A. I would agree with that statement.

5 Q. Okay. You understood that Hunter Douglas offered consumers
6 the choice in 1995 of an operating system that utilized cord
7 and chain on one hand, correct?

8 A. That is correct, on one hand.

9 Q. Or a wand such as the PermAssure wand, the trademark name
10 for Hunter Douglas, on the other hand, correct?

11 A. That is correct.

12 Q. And that was available in October of 1995, when to the best
13 of her recollection Brenda Davis purchased these blinds,
14 correct?

15 A. And I also am very aware that Ms. Davis was never given
16 that option.

17 Q. Well --

18 A. And if she had been given that option, at least in her
19 affidavit she stated she would have chose the wand system, not
20 the cord system.

21 Q. That's something that I am sure you know there is a dispute
22 about, and we lawyers will deal with that later.

23 What you are aware of is, Ms. Davis gave a deposition
24 in which she said, she couldn't recall if she bought the blinds
25 online or by telephone, correct?

1 A. I remember her deposition testimony, yes.

2 Q. And her deposition testimony was, she couldn't even recall
3 whether she went online to buy these blinds or purchased them
4 by phone, correct?

5 A. She could not recall.

6 Q. She had no recollection who she spoke to, if she spoke to
7 anyone.

8 A. That is correct.

9 Q. If she did it online, she didn't speak to anyone.

10 A. If she did it online, yes.

11 Q. And these blinds, whoever she purchased them from, it was
12 not a representative of Hunter Douglas, correct? Hunter
13 Douglas doesn't sell blinds?

14 A. That I don't -- I don't know.

15 Q. So you are not familiar with the fact that my client
16 doesn't sell blinds itself, but it manufactures them for sale
17 by --

18 A. Distributors.

19 Q. -- distribution network?

20 A. I am aware of that, yes.

21 Q. So whoever Ms. Davis spoke to, if she spoke to anyone at
22 all, it wasn't somebody from Hunter Douglas, correct?

23 A. Well, if -- if that is -- if that's factually correct, then
24 I would agree with that statement.

25 Q. Okay. I represent to you that it is.

1 And then subsequent to her deposition, you are aware
2 that Ms. Davis at Mr. Jauregui's request filled out an
3 affidavit saying what you just summarized, that she wasn't
4 aware of the wand option. And if she'd been aware of it, she
5 would have purchased it. That's what she said in the
6 affidavit, correct?

7 A. That's what I read in the affidavit, yes.

8 Q. Okay. So you expressed the opinion that the wand option is
9 safer from a child safety standpoint than the cord and chain,
10 correct?

11 A. That is correct.

12 Q. But what you haven't done in this case is consider whether
13 it was reasonable for Hunter Douglas to offer consumers the
14 choice as it did in this case?

15 A. My opinion is that -- is that they should not have offered
16 a choice. They should have -- once they developed the wand
17 system, they should have made that as their only option because
18 it is to me easier to use. It's cost effective. And by most
19 importantly, it is much safer.

20 Q. Okay. You agree that there are all kinds of situations in
21 our lives in which there are various versions of different
22 products, some of which are safer for one purpose, and some of
23 which are safer for another purpose, correct?

24 A. I mean, I guess. I mean, I never analyzed something in
25 that manner. But, I mean --

1 Q. If I drive a Mercedes 500 sedan series as opposed to a
2 Smart Car, I'm going to have more side impact protection in the
3 Mercedes than I am in the Smart Car, aren't I?

4 A. Yes, but you've chosen the Mercedes I think for other
5 reasons than just that particular. But I would agree that --
6 that you're going to be more protected in a Mercedes than you
7 are --

8 Q. Okay.

9 A. -- Smart Car.

10 Q. And the question, Dr. Wright, is whether there is ever a
11 situation in which a manufacturer could make available
12 different options on his products, one of which is safer, for
13 example one setting. One of which, for example, might have
14 more utility in another setting? Is there ever a situation in
15 which that would be acceptable or that would be reasonable, in
16 your opinion?

17 And you haven't done that in this case, have you?

18 A. As I said before, I don't think safety should ever be an
19 option. I mean -- and I have worked in lots of cases,
20 especially automotive cases, where, you know, if you put a
21 safer design in a vehicle, then you put it as an option,
22 that -- that should never be an option.

23 Q. When --

24 A. If --

25 Q. -- function and utility are involved, there can be

1 different levels of safety involved, depending upon what use
2 some product to. Wouldn't you agree with that?

3 A. I don't know if I can agree with that.

4 Q. In any event, in this case, you haven't done a study or
5 analysis to determine whether or not it was reasonable for
6 Hunter Douglas to offer these two options, both the cord and
7 chain for people who wanted it, and the PermAssure wand for
8 people who wanted that option. You haven't done that here,
9 have you?

10 A. I have not done any analysis of that product for the
11 reasons I stated to Mr. Santiago. There was -- there was no
12 need for me to look at cost analysis or feasibility study
13 because your client had already done that.

14 Q. And in fact, that's -- that kind of makes this unusual for
15 a lot of product cases that you worked on, when you're often
16 talking about whether some other alternative design was
17 feasible or technologically available. Or the manufacturer
18 should have had some different design.

19 We've got all that here. We've got the knowledge of
20 the strangulation risk and my client manufacturing a PermAssure
21 wand that you agree eliminates that risk on these window
22 blinds, correct?

23 A. I would agree with that.

24 Q. So this case is a little different in that regard than the
25 majority you work on, right?

1 A. I would agree with that.

2 Q. Okay. In this case, recognizing that you'll say safety is
3 not an option, you know, every chance you get, you haven't done
4 an analysis to determine whether it was reasonable, or on the
5 other hand whether it was negligent, for Hunter Douglas to
6 offer consumers both of these choices. You haven't done that
7 here, have you?

8 A. I have -- I have looked at -- I -- I guess my answer would
9 be, yes, I have in that I've looked at the feasibility of both
10 products, the mechanics of both products, the usefulness of
11 both products, and have come to the conclusion that one product
12 is unreasonably dangerous; the other is not. And they are both
13 manufacturing wise, cost effective wise, utility wise,
14 virtually the same. Why would your client go ahead and
15 continue to manufacture something that is more dangerous? That
16 is my conclusion.

17 So I have, I guess, done a study in that manner or an
18 analysis in that manner. And so the answer is that I have.

19 Q. I am going to ask the Court and counsel to refer to page
20 171, 172, of your deposition, Dr. Wright. And beginning at
21 line 12, page 171. I am going to -- actually, I will read the
22 questions, and I'll let you read the answers here. Is that
23 okay?

24 A. That's fair enough.

25 Q. So my question at page 171, line 12 was: You mentioned

1 several occasion -- on several occasions your safety is not an
2 option mantra, and I want to ask you a question about that. Is
3 there ever a situation in which a manufacturer could make
4 available two different options on one of its products, one of
5 which was safer in some situations, one of which was more
6 useful to more people and safer in other situations, where it
7 would be justifiable for you for the manufacturer to offer
8 both? Or does the manufacturer have an obligation to determine
9 which of these options is the safest on balance and only make
10 that available?

11 And after objection by Mr. Jauregui, your response
12 at -- well, I went on to say: Do you understand the question?

13 And your answer at line 2 of page 172 was?

14 A. I understand the question.

15 MR. SANTIAGO: Your Honor, I have an objection.
16 That's improper cross-examination impeachment. He didn't deny
17 that, that question. I am not sure why he's cross-examining
18 him.

19 MR. WILLIAMS: Yes, he did.

20 THE COURT: I actually think he did. So go ahead.

21 BY THE WITNESS:

22 A. I understand the question, and we would have to examine
23 each product and each situation for me to make a statement one
24 side or the other.

25 BY MR. WILLIAMS:

1 Q. You have to look at how the product was used, who used it,
2 what type of configurations it could be used in, things like
3 that, correct?

4 A. And I said: I would have to agree with that, yes.

5 Q. You haven't done that here, have you?

6 A. And my answer is: I've looked at it, and in residential
7 situation the answer is that the wand is -- in my opinion is the
8 way to go.

9 Q. Actually, the wand in my opinion is the way to go, correct?

10 A. That is correct.

11 Q. Question: I understand your opinion. But you made no
12 study in this case, have you?

13 A. And I said: I have not done a study in that case.

14 Q. In this case?

15 A. In this case.

16 Q. You say: Right. In that manner of question I have not
17 done a study, correct?

18 A. Let's see. I have not done a study in that case, is what I
19 said.

20 Q. So that was your testimony, and that was truthful in your
21 deposition in 2011 correct?

22 A. That's correct.

23 Q. Okay.

24 A. And the more I have thought about your question since then,
25 I -- I am still stating what I stated then is what I state now

1 in that now I think that my analysis is that I have been able
2 to look at it in more detail in the interim time. And my
3 answer is that -- that they should not have anything available.
4 I mean, I have had a chance to think about it and analyze it
5 more in that length of time.

6 Q. Well, we understand that's what you would like to testify
7 to here today. I am asking you questions about the work that
8 you did in the report prior to your deposition that I was
9 entitled to depose you on. And that was -- because this case
10 is taking a while, that was two years ago, correct?

11 A. That is correct. And my answer is still the same.

12 Q. Have you ever supplemented your report in writing?

13 A. No, I have not.

14 Q. Okay. Now --

15 A. I don't think there is any changes in my report -- in my --
16 there is no changes in my opinions as I have stated now as what
17 was in my report. There has been no changes.

18 Q. Okay. You didn't consider whether it would have been
19 reasonable for Hunter Douglas to offer both the chain and the
20 wand as we just saw in 1995. But that's something that could
21 be done, correct?

22 A. I mean, obviously lots of things can be done.

23 Q. One of the things you have to look at is how various in
24 this case vertical window blinds are used. For example, how
25 tall the window is, correct?

1 A. I mean -- I mean, you have to look at lots of different
2 situations. I'm -- I'm not arguing that.

3 Q. You have to at least evaluate whether there are situations
4 in which a cord or chain was necessary to operate the blinds or
5 more convenient for certain individuals, older people, things
6 like that. You have to at least look at that in doing such an
7 analysis of whether it was reasonable to offer both options, or
8 whether a manufacturer such as Hunter Douglas should have
9 completely wiped out the cord and chain option and only offered
10 the wand.

11 You have to evaluate that, would you not?

12 A. Well, you have to evaluate it. But I think the evaluation
13 is that the dangers that are involved with the -- with a closed
14 loop system, whether it's chain or nylon cord, is too high a
15 risk.

16 Q. We understand that's your --

17 A. And again, if you get into a big situation where you got
18 really tall blinds, maybe electronically controlled is the way
19 to go versus -- because obviously you are getting bigger and
20 heavier type of equipment.

21 Q. Do you know whether those were offered back in the mid-
22 1990s as well?

23 A. I do not know one way or the other. All --

24 Q. Specifically by Hunter Douglas?

25 A. I do know that Hunter Douglas for this particular window

1 blind had the wand system available. And that would have
2 eliminated our being here today if they had offered and sold
3 the -- the wand system to Mrs. Davis.

4 Q. In any event, you haven't taken a look at how consumers use
5 vertical blinds, in what context, to evaluate the different
6 types of uses, the different types of people that use them.
7 You haven't done any systematic analysis of that, have you?

8 A. I have not done that.

9 Q. Okay. You're not a biomechanic, correct?

10 A. I have used biomechanics in some of my analysis, but I
11 don't consider myself a biomechanic.

12 Q. Nor do you consider yourself trained formally in
13 ergonomics, correct?

14 A. That is correct. I do not consider myself trained in this
15 area, even though I use ergonomics in a lot of my analyses.

16 Q. And I think I'll get the same answer. Even though you use
17 it, you have no formal training in the area of human factors,
18 how people interact with various products, do you?

19 A. I use human factors a lot of times, but I'm not -- I don't
20 consider myself as a human factors per se.

21 Q. Have you ever done a statistical analysis to determine how
22 frequent these accidents are, whether it's on window blinds
23 generally or Hunter Douglas products in particular?

24 A. I've done lots of statistical analyses. But I have not
25 done any in this particular assignment because all of those

1 have been done before, as I stated earlier.

2 Q. Do you know how many corded window coverings products by
3 people who know better than you and I -- by their estimate
4 there are in American homes today?

5 A. I am sure there is thousands. I am sure there is hundreds
6 of thousands.

7 Q. Have you heard billion?

8 A. I have not -- I do not know the number. I know it's
9 probably quite a few.

10 Q. Would you have any reason to quarrel with people in the
11 industry who estimate there are currently somewhere in the
12 order of a billion corded window coverings in use in America?

13 A. I am sure that the number of window coverings would
14 approach that number. I don't know how many would be corded
15 versus wand operated.

16 Q. My question is corded.

17 A. I have no idea what the number is.

18 Q. Now, you mentioned state of the art briefly in your
19 testimony with Mr. Santiago. Did you do any type of historical
20 analysis to see if there were any manufacturers in 1995 who had
21 completely eliminated cords and chains on vertical blinds?

22 A. I did not do that. That was not part of my assignment.

23 Q. In fact, to your knowledge, was not Hunter Douglas on the
24 leading edge in offering PermAssure wand as an option in lieu
25 of cords and chains for people who wanted it?

1 A. That I do not know. I do know they had it available. And
2 I stopped -- I stopped looking and working in that area when I
3 found out Hunter Douglas, the defendant, themselves had a wand
4 available.

5 Q. Did you look to see whether any other manufacturer preceded
6 them in that regard?

7 A. I did not look to see if anyone. I just knew that the
8 state of art was such. So I did not bother to look any
9 further.

10 Q. And once again, state of the art about the viability, the
11 feasibility, all those things go into an alternative design.
12 You understand that's not an issue here. We were
13 manufacturing, designing and making available cordless wand-
14 operated vertical blinds in October of 1995, when these blinds
15 were purchased, correct?

16 A. That is correct. I am aware of that. And that is part of
17 my opinion. And that's a reason my opinion is -- as stated is
18 that state of art was such, and all feasibility studies and the
19 manufacturing were already accomplished by the time of
20 manufacture of this blind.

21 Q. On the subject of state of the art, do you know whether
22 there were any industry safety standards for the safe design
23 and manufacture of corded window covering products in 1995?

24 A. I'm not aware one way or the other. I stated that earlier
25 in my deposition.

1 Q. Do you know whether there is such a thing as a safety
2 standard for corded window coverings?

3 A. There probably is. There is usually ANSI standards for
4 lots of thing. I usually don't look at standards when I get
5 involved because I look at what -- when I do an investigation
6 analysis, I look at what's available, what can be done, how it
7 can be designed, how the accident can be avoided. I am
8 interested in -- in the accident scenario, why it was caused,
9 and could that cause be avoided.

10 Very rarely do I look at standards. Sometimes I do,
11 because the standards are -- most of the time are voluntary,
12 and most of the time they are minimal. Most of the time they
13 have very little bearing on the accident themselves.

14 Q. Well, in this case, you haven't looked at the ANSI
15 standard. In fact, you couldn't tell me the designation of the
16 number of the ANSI standard that specifically relates to corded
17 window coverings.

18 A. That is correct. I have not looked at the standards in
19 this assignment.

20 Q. And if I were to represent to you that the first one of
21 those standards was promulgated in conjunction with the CPSC
22 and with the Window Covering Manufacturers Association working
23 hand in hand with the CPSC first promulgated in 1996, the year
24 after these blinds were manufactured, you wouldn't know one way
25 or the other, would you?

1 A. I would say that sounds very reasonable because the CPSC,
2 since I worked with the CPSC before on many occasions, they
3 usually are working hand in hand with various manufacturing
4 groups to institute standards. So I would say that that seems
5 very reasonable to me to my --

6 Q. So in this case you never took the trouble to go look to
7 see whether there was a safety standard or whether one had been
8 promulgated since then relating to this product?

9 A. Again, I am trying my best not to spend my clients' money
10 where -- in situations where it doesn't need to be spent. So
11 the answer is, I am -- I am -- since it didn't bear on my
12 opinion and it was not part of my analysis, I didn't want to
13 waste my client's time and expenses in that manner.

14 Q. Are you aware one way or the other whether the current
15 updated ANSI standard related to corded window coverings still
16 allows cords and chains on vertical window blinds?

17 A. I do not know one way or the other.

18 Q. Dr. Wright, I just got a few minutes left. With respect to
19 your accident reconstruction that you spent most of your time
20 on with Mr. Santiago this morning, you didn't do any studies or
21 tests to determine how this accident occurred, did you?

22 A. What do you mean studies or test?

23 Q. For example, a surrogate study?

24 A. A what?

25 Q. A surrogate study.

1 A. Survey study?

2 Q. Surrogate study.

3 A. No.

4 Q. To get a child to try and manipulate things in a certain
5 way.

6 A. Oh, a surrogate study. No, I did not.

7 Q. You didn't do any study with dolls?

8 A. No, I did not.

9 Q. You didn't do any animations?

10 A. I have not done any -- I have done many animations, but not
11 in this assignment.

12 Q. In terms of your opinion that Max became entangled in this
13 window blind cord by virtue of falling off the nightstand, you
14 basically said it's your feel for what happened based upon the
15 police report, the photos, the examination of the house and
16 things like that, correct?

17 A. All the physical evidence that I was able to get my hands
18 on, both physically measuring myself, physically looking at
19 photographs that I took and the police took, and examining the
20 blind and the situation, looking at the cross-sectional area of
21 the cord, the length of the cord, as measured by the police,
22 that is to me the most likely scenario. And I would say that
23 that's physically what happened to a reasonable degree of
24 scientific certainty.

25 Q. And you understand, there is no dispute in this case that

1 Max became entangled on this nylon window blind cord and died
2 by virtually strangulation. That's accepted, correct?

3 A. I -- at least in my opinion that's what physically
4 happened.

5 Q. There's no --

6 A. I don't know if you and your client have accepted that.
7 But that is my opinion what physically happened.

8 Q. There is no suggestion of parental misconduct or abuse,
9 correct?

10 A. I do not know what you or your client are claiming in that
11 regard.

12 Q. You never heard of any such suggestion, have you?

13 A. One way or another I have not heard.

14 Q. And in particular, you realize that the only question that
15 really has been in this case with respect to how the accident
16 occurred was whether Max was leaning over and holding onto the
17 cord to try and balance himself as he looked out the window, or
18 whether he fell into the loop of the cord without manipulating
19 it himself, correct?

20 A. My opinion, as I stated earlier, is that he -- he's leaning
21 over to the window, probably moving the slats one way or the
22 other so he can look out the window. And as he's doing that,
23 his head enters that loop, which clearly shows is more than
24 large enough for his head to enter as he looks out the window.

25 Q. And you simply thought he entered it without having held

1 onto it beforehand?

2 A. I don't think he held onto it beforehand.

3 Q. And that's the only issue that to my knowledge has arisen
4 in this case. And your conclusion that he fell into it without
5 physically manipulating it or holding it open, for example, was
6 what we already talked about, and that was your feeling that
7 that was the most likely scenario.

8 A. That is correct.

9 Q. No studies or tests that I could ask you about were
10 performed, correct?

11 A. In this assignment I don't feel that there was any need for
12 any -- any of those -- for -- because of the design of the
13 product. So the answer is, since it was no need for any of
14 those studies, I did not do any.

15 Q. In your report you didn't even express an opinion as to
16 whether he became entangled in the cord or the chain, did you?

17 A. I think as I stated to you in my deposition, I think each
18 is very physically possible. I think the more likely one, as I
19 stated in my deposition, is the nylon looped cord for the
20 reasons I gave in my deposition. And that is that the
21 cross-sectional area is much larger. It's easier for his head
22 to get in there.

23 And then also the medical examiner felt that it was
24 the -- the fabric cord, not the beaded chain.

25 Q. We saw this photograph in the handful that Mr. Santiago

1 directed your attention to earlier, sir. And that's the
2 photograph that the police investigator took after the accident
3 and for which the best evidence that we have is that the window
4 blind and the cord had not been manipulated since Mrs. Padilla
5 extracted her son from the cord, correct?

6 A. That is my understanding.

7 Q. So this is the best photograph that gives us the
8 contemporaneous perspective of where the cord and the window
9 blind and in particular the nightstand that you think was the
10 platform that Max used were located on the date of the
11 accident, correct?

12 A. That is correct.

13 MR. WILLIAMS: Okay. Dr. Wright, I think I used up my
14 time. Thank you very much.

15 Thank you, your Honor.

16 THE WITNESS: Thank you.

17 THE COURT: Any redirect?

18 MR. SANTIAGO: Just a couple questions.

19 REDIRECT EXAMINATION

20 BY MR. SANTIAGO:

21 Q. Doctor, at the beginning of your cross-examination, you
22 were asked about what you were asked to do in this case. And
23 in particular, were you asked to evaluate whether or not the
24 window blind in this case was defective?

25 A. And my answer is, yes, I was. After talking to plaintiff's

1 counsel on the phone, and then talking to him in person when I
2 investigated and analyzed the accident scenario, it has always
3 been my opinion and part of my assignment to determine what
4 caused the accident. And since it was a product involved in
5 the accident scenario, was that product defective. And if it
6 was, was the defects causative or contributed to that accident.

7 Q. And in fact, he showed you page 1 of your report and showed
8 you that language, which he asked you about whether it included
9 deciding whether this was unreasonably dangerous.

10 I want you to look at the report on page 3. I'm going
11 to put it up as well. And the top paragraph, can you read that
12 as well?

13 A. Yes. On page 3 of my report, which was dated March 18 of
14 2011: I will use accident reconstruction and reconstructive
15 analysis to explain to the Court and jury why and how this
16 accident occurred. I will also explain how the defect in the
17 design and manufacture of the vertical blinds caused and/or
18 contributed to the accident and Maximilian's Padilla's death.
19 I will also, if asked, discuss the opinions and findings of
20 other individuals who have been retained to give expert
21 opinions in this matter.

22 Q. Thank you.

23 You were also asked about the danger, strangulation
24 danger, that's posed by horizontal blinds versus vertical
25 blinds. I believe you had some familiarity coming into this

1 with horizontal blinds at some point.

2 A. That is correct.

3 Q. Is there a difference in the threat of -- of -- or
4 strangulation threat or risk with either of those blinds?

5 A. If you have a --

6 MR. WILLIAMS: Objection. That's incomplete
7 hypothetical.

8 THE COURT: Can you restate please?

9 BY MR. SANTIAGO:

10 Q. Does it matter to you, Doctor, whether the danger of
11 strangulation from window covering cords comes from horizontal
12 or vertical blind?

13 MR. WILLIAMS: Same objection.

14 THE COURT: Objection overruled. You can answer that.

15 BY THE WITNESS:

16 A. If or since they were -- since both blinds are mounted on
17 the wall and have a closed loop and the closed loop is strong
18 enough to support the weight of a youngster, the risk of death
19 or -- or severe injury is just as great whether it's a
20 horizontal or vertical blind.

21 BY MR. SANTIAGO:

22 Q. And I think I have asked you this earlier. You touched
23 upon it on cross-examination, your so-called mantra that safety
24 is never an option. Where does that derive from?

25 A. That is taught in most engineering courses. And every --

1 every course I taught in engineering mechanics when I was
2 teaching at Ohio State, I always would use that as a mantra to
3 the future designers, future engineers, that safety is never an
4 option. If you can design a product to be safer, then that's
5 the alternative you take.

6 Q. Assuming that new design doesn't affect functionality and
7 is feasible, correct?

8 A. That's right. You have to make sure it's cost effective,
9 that it's physically feasible, and that the product is not
10 diminished in its utilitarian value. But if you can accomplish
11 that and still make a product safer, you always go with the
12 safer route. Safety is never an option.

13 Q. In this case, that's what you have. You have an alternate
14 design that completely eliminated the risk. Hence it makes the
15 prior design unreasonably dangerous. Is that your opinion?

16 MR. WILLIAMS: Objection, that's leading.

17 BY THE WITNESS:

18 A. That is --

19 THE COURT: Sustained.

20 BY MR. SANTIAGO:

21 Q. So in this case, what was your opinion with respect to this
22 vertical blind, given the fact that there was a viable and
23 functioning alternative?

24 A. My opinion is that since there was a safer alternative,
25 that Hunter Douglas themselves had even analyzed, designed and

1 manufactured, then that was an option that Hunter Douglas
2 should have made available to all of its customers. And as I
3 stated earlier, if we had the wand and the Perma -- PermaShield
4 wand and not the looped cords, we would not be here in the
5 courtroom today.

6 MR. SANTIAGO: I have no further questions, your
7 Honor.

8 THE COURT: Okay. I actually have some questions
9 before we break for Mr. Wright. Some basic questions, just so
10 I understand.

11 With regard to how -- so the blinds at issue here,
12 they open centrally, is that correct?

13 THE WITNESS: That's correct.

14 THE COURT: And so if the wand system were to be used,
15 would the wand only be used on one side? Or how would the wand
16 system work?

17 THE WITNESS: The way Hunter Douglas -- I mean, you
18 can design it however you want. And --

19 THE COURT: No, I understand that. But --

20 THE WITNESS: The Hunter Douglas system, the wand
21 would -- the wand would sit on one end. And then you would
22 slide the wand in the system. And as you would slide it to the
23 middle, the both sets would come to the middle.

24 Or you could have it so that -- that you simply go
25 right to left or left to right. You can have it do whatever.

1 With the mechanism as we have here, the wand would sit
2 at in this case the right-hand side. And you would then move
3 the wand to the center to close it. And then the rotation of
4 the wand would change the angle of the slats.

5 THE COURT: Okay. Now, when in response to questions
6 from counsel about alternative designs, one of the things you
7 mentioned was that cost effectiveness is something that you
8 have to consider --

9 THE WITNESS: Absolutely.

10 THE COURT: -- in considering alternate designs.

11 Did you do an analysis of the cost effectiveness of
12 the Hunter Douglas' -- your proposal that Hunter Douglas offer
13 only the PermAssure wands?

14 THE WITNESS: I have -- I have not done cost analysis
15 because the cost system on both are virtually the same. I
16 mean --

17 THE COURT: I guess my question is, how do you know
18 that?

19 THE WITNESS: Well, simply looking at -- since I have
20 done manufacturing before, looking at -- at what the difference
21 is, the mechanism is the same in the headboard. The slats are
22 the same. The gear is the same. Everything is the same.

23 The only difference is, you have the cost of the wand
24 versus the cost of the extra chain and the cost of the cord.
25 So there is -- there is very little difference in total cost of

1 the system, one versus the other.

2 THE COURT: And I guess my question is more specific
3 than that, is how do you know that?

4 THE WITNESS: I guess I know that from being in
5 manufacturing myself and what things cost. And once you get
6 into mass production, how -- what are the costs. I mean,
7 obviously you now have a wand.

8 And the design of the wand is very unique in that you
9 don't need a lot of different-length wands. The way they
10 design the wand is, they put a hollow end, which is very unique
11 and very ingenious, and then a long wand. And if you want the
12 wand shorter, you cut the handle off, cut the length that you
13 want, and turn the handle over and stick it back in. And that
14 way you don't have to manufacture eight or nine different
15 wands. You only manufacture one wand, and then you can make it
16 whatever length you want.

17 So cost wise there is very little difference. I'm not
18 saying they're exactly the same. But looking at the design of
19 the product and the way they've gone about designing, there is
20 very little difference in cost overall.

21 THE COURT: In the record that you reviewed, did you
22 review any documents or testimony about how much it costs to
23 make the wand versus the cord system?

24 THE WITNESS: I have not seen anything in any of
25 the -- in any aspect I have not seen anything one way or the

1 other in that regard.

2 THE COURT: You also testified today that in your
3 opinion the dangers of the closed loop system was too high a
4 risk. And my question is, what if any risk analysis did you do
5 in arriving at that conclusion?

6 THE WITNESS: I have not done any risk analysis in
7 that my opinion -- and I've looked at lots of different
8 accident scenarios. I'm not limiting this just to window
9 blinds.

10 But in my opinion, if you can design a product and you
11 can avoid one death, then that is worth doing. If the
12 functionality -- if the costs are not that much different and
13 the functionality is the same, then if you can avoid one death
14 then that is worth changing and making the safety the only
15 option.

16 I mean, one death is still one death. I mean, one
17 death is too high, at least in my opinion.

18 THE COURT: If you assume that the cost, the costs of
19 the two alternatives are different, is that something that you
20 would have to consider to determine whether or not that would
21 change your risk assessment?

22 THE WITNESS: The answer is, I guess -- I mean, that's
23 a tough question in that --

24 THE COURT: That's why I am asking.

25 THE WITNESS: If the cost -- if the costs are only a

1 few dollars, then it would not change my opinion. If the costs
2 are thousands of dollars, then this would change my opinion.

3 I can tell you, being in manufacturing, looking at
4 this, analyzing hundreds of accidents, the costs are only going
5 to be a few pennies per blind. I can't say they will be
6 identically the same because I know that chain is not the same
7 price as a plastic wand. And I know that the -- that the gear
8 mechanism that the wand uses is a little more than this -- the
9 wheel that the chain fits in.

10 But with that caveat, everything else is identically
11 the same. So we're talking a few pennies, 20 cents, 30 cents,
12 per blind difference one way or the other. To me that is to me
13 virtually zero. And death, one death, is not worth 20, 30
14 cents.

15 THE COURT: Now, you referred to looking at various
16 CPSC reports regarding the blinds at issue.

17 THE WITNESS: Right.

18 THE COURT: And I recognize that you reviewed those
19 reports. But other than those reports, have you done any
20 statistical analysis or risk assessment on your own separate
21 and apart from those reports?

22 THE WITNESS: And the reason -- I said, no, I have
23 not. And the reason I didn't do it is because I didn't want to
24 spend my client's time and money on something that I already
25 had available. I had Hunter Douglas' analysis they'd done

1 themselves, their development that they'd done themselves for
2 their own wand system. And I looked at the CPSC data that the
3 federal government has done.

4 And so there was no need for me to spend my time and
5 my client's money to do something that would be, quote,
6 rediscovering the wheel. So to answer your question, no, I
7 have not.

8 THE COURT: The record that you reviewed, did Hunter
9 Douglas -- was there a study actually done by Hunter Douglas,
10 an incident report or study of statistics of some kind?

11 THE WITNESS: I don't remember anything Hunter Douglas
12 did when it came to the accident, statistical analysis. I know
13 the CPS has done a really good statistical analysis and
14 analyzed. And I know that we have another individual working
15 on this assignment who was the former chairman of the CPSC.
16 And I talked to Stuart Statler numerous times.

17 But what Hunter Douglas did on various accidents I am
18 not aware of. I know I looked at their developmental aspects
19 when it came to the development of this. I know I've read the
20 deposition testimony of quite a few of their employees on
21 whether they were aware of the death -- deaths that the CPSC
22 was making them available.

23 I do not know what they did independently in that
24 regard.

25 THE COURT: Okay. And turning to your opinion as to

1 what happened regarding Max, Maximilian, in this case. Did you
2 do -- I understand you looked at the photos, and you looked at
3 the reports.

4 Did you review or consider any alternative scenarios
5 that may have resulted in the end result?

6 THE WITNESS: No. I was -- any time I look at any
7 accident scenario, I look at all kind of possible -- I even put
8 that in my paper, which I delivered to the -- to the conference
9 which was published by American Society of Mechanical
10 Engineers. And that is, you look for the obvious scenarios,
11 and then you look for the non-obvious because many times the
12 non-obvious are the ones that really physically describe.

13 I've had some really unique and interesting accident
14 scenarios. I mean, they're all tragic. Don't get me wrong.
15 But some really unique. And some are almost impossible to
16 figure out until you finally do figure out how it all fell in
17 place.

18 This one was pretty straightforward when it came to
19 the scenario of describing the accident. But I did look at all
20 kinds of different alternatives. Looking at he wasn't tall.
21 Maybe he was trying to jump up. Or maybe he was trying to do a
22 chin-up. He was too little to actually pull himself up, only
23 being three years old, 52 pounds.

24 So you look at -- obviously you look at the evidence
25 that the chair has been tipped over, the toys have been knocked

1 off, the lamp has been knocked off, so you know that he was
2 physically on that table at some point in time.

3 Now, whether he parted that thing? I don't know he
4 parted that thing. I think he's parting the veins to look out
5 the window, and his head gets in the loop as he's parting the
6 veins. And then when he falls off the table, the loop is here.
7 That's the most likely scenario. That is what physically I
8 think did occur in this accident scenario. And obviously that
9 puts all the pieces of the puzzle together.

10 And if you can put in -- anytime you do an accident
11 reconstruction, if you put all the pieces together and there is
12 no loose pieces, no pieces left out, no factual information
13 that is not accounted for, then usually that's a fairly
14 accurate, if not totally accurate, description of how the
15 accident unfolded on that particular fatal day.

16 THE COURT: So, Mr. Wright, what is your opinion how
17 he got onto the side table?

18 THE WITNESS: My opinion is that he climbed up on that
19 little chair that was there which was next to his bed. And he
20 climbs up on the table. Then he parts -- and as he falls he
21 knocks the chair over, because if you notice there was that
22 little chair that had been knocked over. That is probable.

23 He could have -- he could have climbed on his bed and
24 then onto the nightstand. But since that chair was right there
25 tipped over, that to me is a piece of evidence that he used

1 that little chair to climb up on the table to look out the
2 window.

3 THE COURT: Could he have just climbed on the chair to
4 try to look out the window?

5 THE WITNESS: He could have done that. But I don't
6 think -- if he did that, I don't think the stuff on the table
7 would have gotten knocked off. I think -- I think the chair
8 probably still wasn't high enough for him to look out or for
9 him to get a good view. And so I think then he chair to the
10 table, and then is leaning out to look. Because now when he's
11 on the table, he is physically high enough that the windowsill
12 will be about where his chest is. And now he can look out
13 clearly to see the activity outside the window below.

14 THE COURT: Okay. Those are all the questions that I
15 had. Is there any follow-up from counsel?

16 MR. WILLIAMS: None here, your Honor.

17 MR. SANTIAGO: None.

18 THE COURT: Okay. Very good. So let's take a break
19 before we proceed with the arguments as to Mr. Wright as well
20 as to Mr. Statler. So it's approximately 12:30. Let's take an
21 hour break to 1:30. And then we will reconvene at that time.

22 Thank you. You may step down.

23 MR. JAUREGUI: Judge, can I ask the Court a question?
24 Dr. Wright has to catch a plane around 4:00 o'clock. Is he
25 excused?

1 THE COURT: He's excused.

2 MR. JAUREGUI: Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you.

5 (Hearing recessed until 1:30 o'clock p.m. of the same day.)

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE M. PADILLA, as the Special)	Docket No. 09 C 1222
Administrator of the Estate of)	
MAXIMILIAN PADILLA,)	
)	
Plaintiff,)	
)	
v.)	Chicago, Illinois
)	August 20, 2013
HUNTER DOUGLAS WINDOW)	1:35 o'clock p.m.
COVERINGS, INC.,)	
)	
Defendant.)	

VOLUME 1
TRANSCRIPT OF PROCEEDINGS - DAUBERT HEARING
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

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1 (Proceedings had in open court:)

2 THE COURT: We will now proceed to oral argument with
3 regard to defendant's motion to exclude testimony of Robert
4 Wright. As set forth in the schedule, defendants will go first
5 for 20 minutes, then plaintiff 20 minutes, and then defendant's
6 rebuttal five minutes. It's their motion.

7 MR. SANTIAGO: Your Honor, if I may approach. We have
8 one other item we'd like to bring up before we discharge Dr.
9 Wright. It has to do with the prices. I knew you asked him
10 about that. He had in fact testified about prices in his
11 deposition. He just didn't recall it. There is a price list.

12 I'd just like to put him up to answer those questions
13 that you had for him in terms of the differences in the prices
14 that you have that as part of the --

15 THE COURT: Is it in the deposition?

16 MR. SANTIAGO: It's -- the price list is actually part
17 of the stipulated documents in the pretrial order. It's
18 Exhibit No. 103. It's the price list.

19 THE COURT: Can I see?

20 MR. SANTIAGO: Sure.

21 (Brief pause.)

22 THE COURT: Okay. So you want to recall Dr. Wright
23 for the limited purpose of asking him questions about that
24 document?

25 MR. SANTIAGO: Yes, sir.

1 THE COURT: Okay. That's fine.

2 Mr. Wright, you can step up.

3 (Witness takes the stand.)

4 THE COURT: Mr. Wright, you are still under oath.

5 THE WITNESS: Thank you.

6 THE COURT: Proceed.

7 ROBERT R. WRIGHT, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

8 REDIRECT EXAMINATION (Resumed)

9 BY MR. SANTIAGO:

10 Q. Dr. Wright, you were asked by the Judge several questions
11 concerning the differences in pricing between the vertical
12 corded blinds and the PermAssure wanded blinds. And I
13 understood you did not know what the answers were. You
14 couldn't -- you didn't remember what the pricing was.

15 Do you recall that at some point in time as part of
16 your deliberations and consideration you got a copy of the
17 track -- Hunter Douglas vertical tracking component price list?

18 A. Yes, I remembered seeing the price list. But when the
19 Court was asking me what the difference of the prices were, I
20 couldn't remember them. But I did go back and take a look at
21 them, and -- and I now am able to tell the Court what the
22 difference of the prices are.

23 MR. SANTIAGO: Okay. Your Honor, may I?

24 BY MR. SANTIAGO:

25 Q. I have given you what's been marked as Plaintiff's Exhibit

1 103. Can you tell me what that document is?

2 A. This is a price list from Hunter Douglas for the vertical
3 blinds. And it is the 1996 track and component price list,
4 effective January 1, 1996. And it is Bates stamps down at the
5 right-hand corner of 9582 confidential.

6 Q. And does it include the component price list for both
7 vertical wanded blinds and corded blinds?

8 A. Yes, it lists the prices of the various component parts
9 that both blind systems use.

10 MR. SANTIAGO: Your Honor, if you'd like to ask the
11 questions since this is your question. I can ask him, or if
12 you prefer to do that?

13 THE COURT: Mr. Wright, this is something that you
14 reviewed and considered in arriving at your opinions in this
15 case?

16 THE WITNESS: That is correct. As I stated earlier, I
17 couldn't remember the prices, but I knew they were very small.

18 THE COURT: Anything further?

19 MR. WILLIAMS: Just a question or two, your Honor, if
20 I may? If counsel is done?

21 MR. SANTIAGO: I will ask him real quickly what the
22 prices are.

23 BY MR. SANTIAGO:

24 Q. What are the -- according to this particular price list,
25 what are the component parts of the vertical corded blinds

1 assembly versus the corded blind assemblies?

2 A. Well, everything stays the same. The only difference is
3 you remove the chain and some of the cord and replace it with
4 the wand assembly and the wand itself. And so you would
5 eliminate roughly 14, 15 cents per cord per chain and replace
6 it with a wand, which is at a retail price of \$3. And the
7 assembly is worth -- is retailed at 3.50.

8 Now, when you get into manufacturing costs -- these
9 are the retail costs. When --

10 Q. Just with respect to the retail cost, that's the difference
11 in price between the corded and the wanded blinds?

12 A. At retail price the difference is a little more than \$6.

13 Q. Okay. And wholesale?

14 A. Well, you don't worry about wholesale price. What you
15 worry about is manufacturing price. When we manufactured our
16 products, a product that sold for 2.95, \$3. Cost is 25 cents
17 to manufacture.

18 So -- so basically we're looking at \$6, in that
19 ballpark, retail. So you're looking at less than a dollar per
20 unit that's being manufactured.

21 MR. SANTIAGO: I don't have any further questions,
22 your Honor.

23 THE COURT: Okay.

24 RECROSS-EXAMINATION

25 BY MR. WILLIAMS:

1 Q. Mr. Wright, you referred to this as a retail price. Who if
2 at all do you understand this price list to be for?

3 A. It came from Hunter Douglas. I assume since it says
4 tracking component price list, it is a retail price list.
5 That's what I assume.

6 Q. So your understanding is that this is a price list for the
7 consumer, and these reflect prices that would be involved if
8 you purchase the chain and cord on one hand versus the
9 PermAssure wand on the other?

10 A. If you wanted to replace one with the other, that would be
11 my assumption. I -- I know nothing other than what I see on
12 the price list.

13 Q. Have you looked at the entire document, of which this
14 document is a page?

15 A. This was -- this was the -- this came with some other
16 documents when it came to installation and -- and what -- what
17 the installer is supposed to try to do. And I read through all
18 of that document. So -- but I do not -- when it came to --
19 this is the only thing I saw when it came to prices.

20 Q. Do you know what this document is part of, what kind of a
21 price list? Do you recall the cover page of this document?

22 A. This was the top sheet of the document I saw.

23 Q. So you don't know whether this is a price for the retail
24 customer as opposed to for the fabricators who make Hunter
25 Douglas branded products? You don't know one way or the other?

1 A. That I do not know.

2 Q. You haven't even bothered to find out whether this is a
3 retail price versus a manufacturer's price to the fabricator?

4 A. If -- I can tell you this, this is a price list. And I can
5 tell you that whatever price is on here, the manufacturing
6 price will be less than what is on here.

7 Q. Do you know whether this is the price that Hunter Douglas
8 charged for these components to its independent fabricators who
9 manufacture this product?

10 A. It might be. I do not know.

11 Q. Are you even familiar with the fact that Hunter Douglas
12 sells component parts for products that it designs to
13 independent as well as wholly owned fabricators?

14 A. I'm aware that they subcontract some of their blind
15 manufacturing out. Yeah, I am aware of that.

16 Q. Subcontract is your term, right? You've never seen a
17 subcontract because that's not what they do.

18 A. That's the term I would give it.

19 Q. They have a system -- strike that.

20 Do you know whether in fact it's even the case that
21 Hunter Douglas has a system by which both independent and
22 wholly owned fabricators manufactured products with the Hunter
23 Douglas label on them?

24 A. That I'm aware. That's the reason I call it a
25 subcontractor. That's my terminology.

1 Q. And then in turn, are you aware that the products were
2 sold, every one made to order, nothing off the shelf, by a
3 series of independent dealers and distributors?

4 A. That's my understanding.

5 Q. Those dealers and distributors would take an order from the
6 customer and place that order not with Hunter Douglas but with
7 one of these fabricators, correct?

8 A. That is my understanding.

9 Q. Hunter Douglas designed the products that bore its name and
10 also manufactured the components which it would then sell to
11 fabricators such as the one in this case.

12 A. That's my understanding.

13 Q. And do you know whether this in fact is the price list that
14 Hunter Douglas provided to its fabricators saying, if you want
15 one of our PermAssure wands, or if you want one of our cords
16 and chains, here is the cost to you? Do you even know one way
17 or the other?

18 A. That I do not know one way or the other.

19 I just -- this does give us a ballpark idea what the
20 difference in the costs are.

21 Q. So with respect to what counsel is drawing your attention
22 to, the PermAssure wand --

23 A. That's correct.

24 Q. -- we looked down into the bottom half of that first
25 section, cord, chain and wand. And we see 30-inch PermAssure

1 wand in white and ivory. And we see a unit price for each of
2 \$3. Is that correct?

3 A. That's correct. And you buy them in lots of ten.

4 Q. And so a lot of ten would cost, whoever this price applies
5 to, \$30?

6 A. That's correct.

7 Q. Then you look up at the plastic chain at the top. And you
8 see that that's a 14 cent item, is that correct?

9 A. That's correct.

10 Q. And with respect to the cords, do you see a price for
11 those?

12 A. I -- I couldn't find the actual nylon cord here. But maybe
13 it is here.

14 Q. In any event, it could be on the preceding page because
15 this is not the first page of that document.

16 So in any event, if you replaced the cord and chain,
17 if you assumed that each of them cost 14 cents, you would be
18 eliminating 28 cents cost to the fabricator if that is who this
19 price list is for. You would then be adding \$3 onto that
20 fabricator's cost to manufacture these products, correct?

21 A. That is correct.

22 Q. For a net increase of roughly \$2.75 or 72 cents, correct?

23 A. That's correct.

24 Q. Are you aware, Dr. Wright, that when the PermAssure wand
25 was first offered as an option by Hunter Douglas' fabricators

1 and dealers that from the beginning of that time, 1995, to the
2 present it's always been a no-cost option?

3 A. I am -- wasn't aware one way or the -- I know the Court was
4 asking me what the difference of the cost was. And this was my
5 best estimate after looking at this what the actual difference
6 of the cost between the two were.

7 Q. You never bothered to determine whether there was any
8 difference in cost to the consumer to get the wand versus the
9 cord and chain in the course of your work in this case, did
10 you?

11 A. I assume they were very close to the same price, but I did
12 not know the difference.

13 Q. And you didn't take any steps to find out that answer, did
14 you?

15 A. As I stated before, answer would be, no.

16 MR. WILLIAMS: Okay. No further questions, your
17 Honor. Thank you.

18 THE COURT: Okay. Anything else?

19 MR. SANTIAGO: No further questions.

20 THE COURT: You may step down. Thank you.

21 (Witness excused.)

22 MR. WILLIAMS: If the Court please, are you ready?

23 THE COURT: Yes, thank you.

24 MR. WILLIAMS: Your Honor, thank you for the
25 opportunity today, first of all. I think this is an important

1 couple of days in this case.

2 So let's take one witness and one subject at a time.
3 With respect to Dr. Wright, I think there are two things to
4 keep in mind in evaluating his testimony and whether he meets
5 the Daubert Kumho Tire requirements to testify as an expert in
6 this case.

7 One is, he is an accident reconstructionist. He's got
8 a different name for it. He holds himself out as someone
9 qualified in -- I lost track of that.

10 Force effects and --

11 THE COURT: Force analysis and dynamics.

12 MR. WILLIAMS: Force analysis and dynamics. And
13 that's his name for what he does. But it's accident
14 reconstruction, as he acknowledged in his testimony. That's
15 what Dr. Wright does.

16 The second thing to keep in mind here is that this
17 lawsuit as it comes up to trial involves two claims. One is
18 for negligence, and one is for breach of warranty. And there
19 is no strict products liability claim pending in this lawsuit
20 any longer.

21 When you take a look at his testimony, as I will do in
22 the next 19 minutes, you need to divide it into two areas: The
23 accident reconstruction and the testimony that he will give if
24 he is allowed to do so with respect to the product's design,
25 for lack of a better shorthand term.

1 I'm going to talk about the accident reconstruction
2 end of things first. I don't think it's any question that
3 Dr. Wright has the general background, qualifications to
4 qualify as an expert witness in the area of accident
5 reconstruction generally.

6 With respect to this case, to me the only issue is
7 whether or not he has applied the principles from that field of
8 expertise in a way that meet the Daubert standard and can be
9 evaluated by the Court and evaluated by the jury and held up to
10 some standard to see whether it passes muster or not.

11 I don't think he has. He acknowledges in his
12 deposition that basically it's his feel that the accident
13 occurred in the way that he says it does. And if I were your
14 Honor, I might be wondering, what's the accident reconstruction
15 issue in this case? And let me see if I can cut through and
16 clarify that.

17 There is no dispute in this case that Max became
18 entangled on the nylon cord of this window blind, and in all
19 likelihood did so as a result of climbing up on that
20 nightstand, and whether swinging, whether attempting to look
21 out the window or doing something had a horrible trip and fell
22 into the loop of that nylon cord.

23 There was a question at the beginning of this case,
24 which counsel for plaintiff was pursuing in discovery quite
25 vigorously. And that is whether it was the beaded chain or the

1 nylon cord that was the mechanism of injury and death here.
2 That question was answered for once and for all by the medical
3 examiner who said without any doubt, the ligature marks around
4 his neck made it clear that it was the nylon cord and not the
5 beaded chain. You would see perforated style ligature marks if
6 it were the chain.

7 And that was an issue because Mrs. Padilla, even
8 though she told the police officer that she had extricated Max
9 from the cord, since that initial date had maintained that, no,
10 it was the chain. I don't think there was much of an issue
11 there. I don't think it was terribly relevant. But it was
12 pursued in discovery.

13 So when Dr. Wright was retained there was a question
14 about how -- how the accident occurred, which had been the
15 mechanism of his injury. Dr. Wright, even though it's not in
16 his report, now agrees and concedes it's more likely the nylon
17 cord. And other than that, there aren't going to be accident
18 reconstruction issues presented to the jury in this case.

19 But on that subject, I believe Dr. Wright is generally
20 qualified. I believe his opinion though is speculative because
21 he can't articulate what he did other than rely on his general
22 expertise and have a feel for the fact that Max fell into the
23 cord somehow while leaning over as opposed to holding onto it.

24 If he were allowed to testify, it should only be on
25 that limited area. And on that subject my position to you is

1 that it's -- it's a close call. I think the feel testimony
2 does not meet Daubert. I think that is not the kind of rigor
3 that the Court is supposed to apply. But it's a close call and
4 that's all I need to say about that.

5 To me the more fundamental issue in this case is the
6 testimony that Dr. Wright will give, if allowed, with respect
7 to the design of this product. And as you have heard this
8 morning, I think it's pretty clear, Dr. Wright wants to be able
9 to testify that this product was defectively designed and
10 unreasonably dangerous. And that's an opinion that he almost
11 seems to assume in his report.

12 There is no explanation that that's part of his
13 assignment in the assignment of the report. He tells you that,
14 well, that's typically what he does when he's asked to
15 reconstruct an accident is determine whether a defective
16 product was the cause of an accident. And in this case, that's
17 what he did. And when he summarizes his opinions in his
18 report, the defect in the design of this product is almost
19 taken as a given.

20 And what he's testified to in deposition is that as
21 soon as Mr. Jauregui retained him, told him he had a case
22 involving vertical window blinds, and told him that there was a
23 cord on it, he had already formulated his opinion that those
24 blinds were defectively designed, period. He needed do nothing
25 more. And as I think is clear today, he hasn't done anything

1 more.

2 Now, that would be problematic even if this were a
3 strict products liability case. If it were a case in which the
4 claim is that under the law of Illinois the product met the
5 definition of a defectively designed product, then perhaps
6 Dr. Wright's testimony, as cursory as it is, might at least be
7 relevant. But in addition to not being qualified under Daubert
8 and Kumho Tire, its not even relevant to this case because the
9 claim here is negligence. Plaintiff has to prove that Hunter
10 Douglas behaved, acted in a way that was negligent, that didn't
11 meet the applicable standard of care in designing and
12 manufacturing these window blinds.

13 It's important to note what I was just discussing with
14 Dr. Wright, that Hunter Douglas doesn't sell window covering
15 products. Every Hunter Douglas product is made to order. And
16 what Hunter Douglas does is design those products, and that it
17 manufactures the components. It has extrusion factories that
18 manufacture everything from headrails to slats to wands. And
19 it manufactures those components.

20 And then it has a system of both independent and
21 wholly owned fabricators around the country who compete with
22 each other. And those fabricators compete by making themselves
23 available to the independent dealers and distributors who sell
24 Hunter Douglas products.

25 And so the way someone such as Brenda Davis gets a

1 Hunter Douglas product, Hunter Douglas branded product, is to
2 go to one of those independent retailers, say, I've got a
3 window this size and I want this style of window covering. And
4 I want it in this color. And I want a cord and chain as
5 opposed to a wand, and makes a number of choices that the
6 retailer then communicates to one of these fabricators who's
7 competing for the retailer's business.

8 And those fabricators then take the order. And they
9 either go to their warehouse or place an order with Hunter
10 Douglas for the components and manufacture the product. They
11 then turn around and ship it to the dealer, who then delivers
12 it to the consumer, such as Brenda Davis.

13 So Hunter Douglas -- this is a little bit of a
14 digression. But this business about Dr. Wright claiming that
15 Brenda Davis wasn't told about the availability of the wand
16 because they have to concede that we were making it available
17 at that time. Their argument is that she wasn't made aware of
18 the wand at that time.

19 As you may or may not know, we have a motion in limine
20 with respect to her testimony there. It's not only negative
21 hearsay, as I call it. It's not what somebody said. It's what
22 somebody didn't say. But she doesn't know who didn't say it.
23 And in any event, we know it wasn't Hunter Douglas. So there
24 is some inadmissible testimony out there that we'll deal with
25 when the time comes.

1 But the point is that this product is designed and
2 basically the components of which manufactured by Hunter
3 Douglas. That's what it does. And so that's the conduct. And
4 it's the design that we -- that we say is the fair issue in
5 this case. And this is an unusual case in that it's not your
6 typical defectively designed or negligently designed product
7 case, where plaintiff and his or her expert come in, as Dr.
8 Wright has sort of done here, and say, aha, there is another
9 way you could have made this that was technologically feasible
10 and would have done the job, and it wasn't too much more
11 expensive. And you should have done that as opposed to what
12 you were doing.

13 Here we -- we'll stand up from the beginning of trial
14 and say very loudly how much we are concerned with child safety
15 and how many of the features that we sell today, including the
16 PermAssure wand in 1995, were developed because of the
17 strangulation risk to young children that we know exists with
18 corded window covering products. There is no question about
19 that.

20 There are all kinds of questions about which types of
21 products were initially identified as being the problematic
22 ones, and they weren't horizontal blinds for reasons that we'll
23 go into eventually but don't need to today. But in any event,
24 Hunter Douglas is standing up and say proudly, we have these
25 safety options for you. But they are options.

1 And the question in this case and the potential
2 relevance or lack of relevance of this witness goes to whether
3 it was reasonable to offer both, because we offered the cord
4 and chain, and we offered the wand. There are other safety
5 devices such as the tension device that we haven't even talked
6 about today.

7 But Dr. Wright would come in and say, simply because
8 safety is never an option, if you got a wand, then you always
9 have to sell that. And you can't sell any other options.
10 Okay. I'll take my chances on cross-examination with him at
11 trial if I have to, if he's done an analysis of whether we were
12 negligent or not. But he hasn't even done that. And that's
13 why his testimony on the subject of the design of this window
14 covering has to be excluded.

15 There is no analysis. There is no evaluation as you
16 asked him of the rate of injury or death of the number of
17 incidents compared to how many products are out there. Dr. Ray
18 will testify to that and we'll talk about her tomorrow. But
19 he's done no evaluation of that. He's done no evaluation of
20 whether there are consumers who, A, prefer the cord and chain
21 option. And I can represent to you that today with multiple
22 safety cordless options available, motorized, wand, a third of
23 the vertical blinds that are sold today people still want the
24 cord and chain for all sorts of reasons, legitimate reasons.
25 They relate to utility. They relate to function. You've got a

1 tall window covering. You got a couch in front of it.

2 Dr. Wright can say all he wants that there is no
3 effect on utility. I can say all I want that he is wrong about
4 that. But for purposes of today the point is, he's never done
5 an analysis of that such that I could cross-examine him on it.
6 And that's what he has to have done in order to be allowed to
7 testify in front of the jury.

8 If he hasn't done the analysis, if under the Chapman
9 versus Maytag case, Seventh Circuit case that we cited in our
10 brief -- if he hasn't done an analysis using some scientific
11 method and, you know, different types of engineers and
12 different types of scientists, Daubert and Kumho, the Courts
13 have recognized that there isn't a template that you can apply
14 to every case. And that's also true, and that's also fair
15 comment.

16 But whatever your discipline is, you have to apply
17 whatever the best available scientific method is to arrive at
18 your opinions or conclusions. And in this case, Dr. Wright has
19 done none of that. He has not evaluated risk utility. He
20 hasn't evaluated how unsafe this is. He says something we all
21 can agree with; and that is, you know, we don't want anyone to
22 lose a life. But we don't ban bicycles, and we don't ban
23 baseball bats, and we don't ban automobiles. Everything in
24 life involves evaluation -- not everything. Many things in
25 life involve evaluations of risk and benefit.

1 And to have a fair argument in front of a jury on the
2 question of whether it was reasonable under the negligence
3 claim for Hunter Douglas to have continued to sell the cord and
4 chain as an option when it had the PermAssure wand, there has
5 to be such an analysis.

6 Dr. Wright has never done one. He simply wants to be
7 allowed to testify that because one option is safer than the
8 other, that the less-safe option should not be allowed to be
9 offered, that the consumer should not have a choice. And once
10 again, if there were an analysis of whether, well, Mr.
11 Williams, the -- I've looked at it. I don't think the utility
12 of the cord and chain is great enough to outweigh the risk. Or
13 I don't think that there is a functional difference between the
14 wand on the one hand and the cord and chain on the other, then
15 I'd be able to say, okay, Dr. Wright, tell me what you have
16 considered in reaching that opinion so that I can cross-examine
17 you and understand it and have the Judge and jury understand
18 it.

19 He has done none of that here. We went through
20 everything that he didn't do. He's not a biomechanic, human
21 factors engineer, ergonomic expert. He's done no analysis of
22 how many of these window coverings there are out there. He's
23 certainly done no analysis of how many injuries occur on
24 vertical blinds versus horizontal blinds.

25 There is a difference in the operating systems on

1 those, so that it's -- it's harder to design the continuous
2 loop out of a vertical blind than it is a horizontal blind.
3 Horizontal blind, you may see those tassels at the bottom. And
4 back 30 years ago, there often were continuous loops on
5 horizontal blinds. And then the CPSC identified strangulation
6 hazard in the 1980s.

7 And Hunter Douglas was the one that came up with the
8 safety fix that the CPSC blessed and said, this is what we want
9 you to do on horizontal blinds. And that is what's called the
10 break-away tassel, the break-through safety tassel, where you
11 have two cords coming out of the headrail. They don't need to
12 go up and down continuously. They are just being pulled
13 together to pull that bottom rail up.

14 And so Hunter Douglas came up with basically two half
15 tassels that click together. One cord goes into one; one goes
16 into the other. And if a child gets in the middle of it, three
17 or four pounds of pressure cause it to break apart. And that
18 was the fix in 1995 that was implemented in the first voluntary
19 retrofit campaign that the industry did.

20 The point is, there are differences between vertical,
21 and horizontal blinds in that way. You can't have something
22 that breaks apart on a vertical blind because you always have
23 to be able to apply pressure. If something broke apart with
24 three pounds of force it wouldn't work. So something like the
25 wand is an excellent option for a lot of uses.

1 But Dr. Wright hasn't seen fit. And saving his client
2 money is a nice thing to repeat over and over. But it doesn't
3 change the fact that he didn't do things that he needed to have
4 done, that he has to do, in order to be qualified to give an
5 opinion as to whether Hunter Douglas continued selling of the
6 chain and cord as an option when it had already developed the
7 wand, which we say is better in child situations if -- if the
8 window will accommodate it, was negligent or not.

9 And no matter how much plaintiff wants to blur the
10 line and hold onto its strict liability claim, even though
11 there isn't one in this case, it is a distinction that has
12 meaning. It's a distinction that the Court needs to keep in
13 mind.

14 Dr. Wright's testimony is basically a one size fits
15 all. He hasn't looked at Hunter Douglas' conduct. Everything
16 he said on the stand could have been true for Levolor or
17 Springs or any other manufacturer of window covering products.
18 There was no evaluation of how long it took Hunter Douglas to
19 develop the wand, the time and money that was spent doing that,
20 whether it should have developed it sooner than it did.

21 None of that was addressed in this case. And you
22 can't have an evaluation of whether Hunter Douglas acted
23 reasonably in response to the strangulation risk that began to
24 be understood in the '80s -- in the '80s and '90s without such
25 an analysis.

1 He is an engineer. But he's done no analysis of how
2 the wand affects the function and utility. He simply says he
3 doesn't think it affects it, as though saying it makes it so,
4 and it doesn't. There are ways in which it does affect
5 utility, which are very easy to understand. But Dr. Wright
6 simply won't look at those. But most importantly for this
7 motion's purposes, hasn't looked at those.

8 THE COURT: Mr. Williams, let me ask you this: Why
9 did Hunter Douglas continue offering the option of the corded
10 loop option?

11 MR. WILLIAMS: You will hear at trial a great deal of
12 testimony about that. Basically it's because the wand cannot
13 be used. They have -- show you pictures. They have vertical
14 window blinds that is 15 feet tall, that are set with couches
15 or sofas in front of them. You cannot have a wand that you can
16 get the leverage on to effectively operate those.

17 It goes from everything such as that extreme example
18 to the 85-year-old -- I use my mother as an example -- woman
19 with arthritis and Parkinson's, who can't lift her arm above
20 her head to operate a wand, and for whom pulling a cord or
21 chain is a much easier thing to do, and who doesn't have small
22 children or pets around the house to present a risk to. So
23 that risk-utility analysis comes into play.

24 And as I say, this PermAssure wand was fairly new in
25 1995. It was out there. You'll see the sample book. You'll

1 see the literature from Hunter Douglas' CEO to the fabricators
2 in 1994 and 1995 announcing the wand and saying, get the word
3 out because this is a really great development from the child-
4 safety standpoint.

5 But with 18 years of that wand and other safety
6 devices existence behind us, today we continue to have a third
7 of the people who want the cord and chain. It just -- it --
8 it's the only thing some people can use. It's the preferred
9 thing for other people to use. And there is a great deal of
10 time and money put into educating and making sure that this
11 independent dealer network advises people about the options and
12 about, you know, are you going to have this in a room with
13 young children and things like that.

14 So people make choices, and they continue to do that.
15 And that's why you continue to see new vertical window blinds
16 when you start paying attention to them after seeing a case
17 like this one that have cords and chains on them. It is not a
18 one size fits all. It is a -- it's an improvement in consumer
19 product safety by virtue of having the options.

20 THE COURT: Okay. Very good. Thank you.

21 I will give you another minute to wrap up.

22 MR. WILLIAMS: That's all I'm going to need, your
23 Honor. You interrupted me at just the right time.

24 I think the upshot is that on the question of the
25 product's design and specifically whether Hunter Douglas was

1 negligent in continuing to offer the cord and chain option,
2 Dr. Wright doesn't provide the jury with any admissible
3 testimony that will help them decide that question. He simply
4 will come in and say that a wand is less capable of strangling
5 a child than a cord and chain are. And we can all agree to
6 that. There is not going to be any dispute about that at
7 trial.

8 With respect to the question of whether it was
9 reasonable for Hunter Douglas to continue to make both options
10 as well as others available to consumers, he's done no
11 analysis. He's applied no rigor. There is no scientific
12 method on which I or anyone else can cross-examine him. And
13 for that reason he doesn't meet the standard, the minimal
14 requirements, of Daubert and Kumho Tire. And at least on that
15 subject, setting aside the accident reconstruction topic as I
16 did earlier, at least on the subject of the design and Hunter
17 Douglas' negligence or lack of negligence, he is not qualified.

18 THE COURT: Thank you.

19 MR. SANTIAGO: Thank you, Judge.

20 I am not sure where he got all these facts, the ones
21 presented today. The Court has a very limited record with
22 respect to what Dr. Wright said. And they concede that they
23 put out there a bad product with the good product. No question
24 about it. They own up to it.

25 But you have to see how these mechanisms work in the

1 real world. Otherwise they'll just slip one by you. It's like
2 them selling two guns. One gun is extremely safe because it
3 has no bullets. You can have that. But we'll also give you
4 one with a bullet. And you can take your chances with it. And
5 one day you might blow your head off.

6 That's the kind of scenario they're proposing. And
7 they don't have an excuse for it. They never produced any
8 documents to us that explained to us, explained to our expert,
9 why it is they proceeded to continue to produce this hazardous
10 strangulation device. It's no question it's dangerous.

11 But you need someone like Dr. Wright to explain to the
12 jury how the mechanisms operate. You need to have him explain
13 to the jury how it is it came about that this poor young child
14 got strangled. It can hold his weight. That's how strong
15 that nylon cord is. It can open up in a loop and grab a
16 child's neck as he's falling off a dresser.

17 He has to be able to say those things. And there is
18 no question, as a reconstructionist he is qualified to make
19 those determinations. He uses a methodology that's
20 bulletproof. He published it. He uses it all the time. He
21 used it in this case. The jury should be allowed to hear that.

22 If they want to assail his credibility, those, you
23 know -- they are fine. They can do that. But this does not
24 take him out of the Daubert analysis. He is in every sense of
25 the word Daubert qualified.

1 Now, I don't know what case law they have in -- again,
2 they say it's okay to offer a product that has a strangulation
3 risk to children, even if the alternative feasible product is
4 completely available and eliminates the risk of strangulation.
5 The case law that I know of in Illinois says that that would
6 prove an unreasonably dangerous product under the risk utility
7 test. That's -- that's why we are here, Judge. They violated
8 the law. And you have to have someone like a Dr. Wright to
9 explain why it was not an acceptable risk and how it actually
10 functions.

11 Under Federal Rules of Evidence 702, Judge, an expert
12 is one who has specialized knowledge from skill, experience,
13 training or education. He's got plenty of experience on
14 product design and his experience in life with these types of
15 reconstructions and analysis to offer the opinions that he has
16 in this case.

17 And I'll tell you what, Judge. I go one further. I
18 pointed it out. On page 3 in his opinion he actually does and
19 understands that the reason why he's being asked to be in this
20 case is to explain how the defect in the design and manufacture
21 of the vertical window blinds caused and/or contributed to the
22 accident of Maximilian Padilla's death.

23 He has testified to that. That's not a given by these
24 guys. The defendant doesn't agree to that, so we have to prove
25 it. They want to attack him. That goes to the weight of the

1 evidence. That doesn't bar him under Daubert.

2 THE COURT: Counsel, it seems to me, though, that at
3 least from what I understand today, that what they are -- what
4 defendant is challenging is his opinion that the product is, as
5 you say, unreasonably dangerous, as opposed to unreasonable
6 risk, in light of the availability of the alternative.

7 And doesn't an expert -- when an expert tries to
8 determine or assess whether a risk is unreasonable, doesn't an
9 expert have to weigh the costs and the benefits of whatever
10 issue it is that they are trying to assess?

11 And so, for example, you know, one can say that
12 seatbelts in cars make them more expensive, right? And so I
13 suppose that back in the day or someone could argue, I don't
14 think successfully, that we should all take the risk of not
15 having seatbelts because it makes cars cheaper. And no one
16 would argue that -- one could argue, no, that's an unreasonable
17 risk because the risk of driving without a seatbelt outweighs
18 whatever cost benefits there may be with a car without -- or
19 not having seatbelts in the car.

20 But in any sort of risk assessment, doesn't an expert
21 have to consider both the costs and the benefits of both
22 alternatives? And my other follow-up question is, did Dr.
23 Wright do that here?

24 MR. SANTIAGO: Well, he did to some degree. But I
25 tell you what. The case law doesn't require that in a

1 situation where you have a fully vetted alternative design that
2 cures the defect. That's the issue. All the case law that we
3 know of in Illinois at least says that if you got a better
4 product, you better use it. If it's feasible and it's been
5 vetted already and it's out there, then you don't really have
6 to put up that kind of proof.

7 It's in cases you get in trouble with these. You see
8 it in these cases where the expert is proposing an alternative
9 design that he found with respect to another set of goods.

10 This is a product that's custom made for that
11 particular issue. The Perma wand addresses the hanging risk.
12 They don't even deny it. They want you to say, oh, that's
13 okay. It's a walk in the park. It's not. It killed a boy.
14 It will continue to kill children. And if it's continued to be
15 sold without a warning or without -- you know, it has to be
16 taken out because it's unreasonably dangerous by definition
17 under the case law and in this state. That's -- that's my
18 position.

19 And with respect to risk analysis, why would Dr.
20 Wright sit there and second guess Hunter Douglas and their
21 development of this product? It took time to bring this
22 development -- this product to the market. Done their own
23 marketing analysis, everything. They found it feasible to sell
24 it.

25 And if you look through the brochure, Judge, we read

1 some of it to you. This is going to replace these problems.
2 This is going to replace those cords. You can replace it
3 across the board on all the other kind of blinds you have
4 corded loops. You have that kind of situation, Judge. And
5 it's not addressed in the case law. That's by definition an
6 unreasonable product. It has to be completely eviscerated.

7 THE COURT: Okay. And I guess the question is, my
8 question is, whether or not that's something that this expert
9 considered and reviewed. So in other words, did he review all
10 the different model lines that Hunter Douglas has and all the
11 different scenarios? Did he review the studies about whether
12 or not in the long term Hunter Douglas could even sell the
13 wands or what that effectiveness would be?

14 I mean, is that the type of analysis that Dr. Wright
15 did? Or did he -- as defendants claim, did he look at the
16 mechanism of the cords, look at the resulting death and the
17 risk, look at the fact that there was something else available
18 and say, aha, that's basically all I need for my testimony that
19 it's an unreasonably dangerous product?

20 And if that's what he did, I guess my question
21 becomes, is it your position that is enough?

22 MR. SANTIAGO: That is enough, Judge, and that's
23 enough for the jury because the jury can come to their own
24 conclusion on that. They can argue to -- to the dogs come back
25 that it's a reasonable product. Well, let them prove that.

1 I mean, in all the cases that we read, defendants have
2 the right to prove whether or not there was a -- whether it was
3 less feasible or, you know, whether -- you know, whatever they
4 want to put on the table, they can. The jury is going to have
5 to make that determination.

6 But Dr. Wright has a right to say his opinion based on
7 his engineering background, his design experience, on
8 examination of the product, and say outright, everything else
9 has been said and done about this, this is a bad product.

10 THE COURT: I think that -- you know, and in the
11 papers, in plaintiff's response, they talk about how Dr.
12 Wright's opinion is that the wand is safer than the cord.
13 Okay? And, you know, as I sit here, I think that Dr. Wright
14 probably is qualified to offer that opinion that it's safer.
15 Okay? I don't know if there is a dispute about that, but I
16 think he looked at the mechanism. He looked at the way it
17 works. He looked at the brochures for the PermAssure and
18 compared that to the mechanism in the blinds at issue.

19 And based upon his engineering and mathematical
20 background, he concluded that the mechanism could work. The
21 wand could work on these shades. That it's technically
22 feasible to work on these shades. It will do what the -- it
23 will be equivalent function, right, for these shades, and that
24 it's safer.

25 MR. SANTIAGO: Right.

1 THE COURT: But I think isn't that a bit different
2 from saying, and from that I conclude that Hunter Douglas was
3 unreasonable by offering other consumers a choice in which
4 device to use? Isn't that a different opinion or an opinion
5 that requires a different type of analysis?

6 MR. SANTIAGO: Well, he -- he has the qualifications
7 and the background and basis to make -- to have that opinion,
8 Judge. The jury has to decide for itself and defendant can
9 argue the contrary view of that. But he's allowed to do that.
10 He has a basis for that opinion. He has a basis in his -- in
11 teaching engineering all those years.

12 This is part of their mantra. If you can produce a
13 product that's safer than the previous one and if it's feasible
14 and it's cost effective and doesn't change functionality, by
15 definition then it makes the previous product unreasonably
16 dangerous. That -- and you see that in all the cases. It
17 didn't just jump into the case law, Judge. Some engineers,
18 somebody said it. And he's just bringing -- you know, this is
19 what they do. They look at these products, and they make those
20 decisions.

21 Now, the jury is entitled to hear that. And anything
22 else goes to the weight of his testimony. And that's -- that's
23 part of the give and go in these cases, Judge.

24 THE COURT: So let's talk about the cost effectiveness
25 aspect. That's something that was talked about in testimony.

1 And Mr. Wright was called back up to talk about that a little
2 bit.

3 So he looked at the document that -- or you asked him
4 about spelling out some of the costs and relative costs and
5 what not. And then he talked about how, given his
6 manufacturing background, he has some sense of that. At least
7 that's what he purports.

8 Other than that, did he do any other analysis as to
9 the respective costs of the two options? Cost of
10 manufacturing, cost of limitation, cost of sales?

11 MR. SANTIAGO: Right. As he testified to, Judge, he
12 didn't have to. He assumed that implicit in the fact that
13 Hunter Douglas was promoting and selling the wanded blind as a
14 substitute, as a replacement, complete replacement, for the
15 vertical -- for the vertical corded blinds. He can assume
16 that. Why would he recreate the wheel? I think he actually
17 also said that.

18 THE COURT: So he assumed that because Hunter Douglas
19 was willing to do it, that it was somewhat cost effective for
20 them.

21 MR. SANTIAGO: They were promoting it as such. This
22 is -- this is the next best thing in -- in the evolution of
23 these blinds. State of the art now.

24 THE COURT: Okay. As far as his assessment of risk,
25 he talked about relying upon the CPSC reports. And then he

1 referred to some documentation about Hunter Douglas. Do you
2 know what he was referring to there?

3 MR. SANTIAGO: I am not sure as we talk right now,
4 Judge, I'm not sure what you are referring to.

5 THE COURT: Okay.

6 MR. SANTIAGO: I could ask my colleague.

7 Do you know?

8 MR. JAUREGUI: Thanks, your Honor.

9 Yes, Mr. Wright was also talking about specific
10 documents that were produced by Hunter Douglas, which involved
11 some of the products, some of the Hunter Douglas window blind
12 coverings, which had been involved in incidents. But I guess
13 one of the most important aspects of his testimony, and the
14 reason why this case is a little bit different, is because you
15 have an agency that is mandated by law to assess the risk of
16 injury, and the U.S. Consumer Product Safety Commission. And
17 they have done hundreds of these analyses. They review
18 hundreds of these cases. And in their analysis, they -- not
19 only they conclude that this was a dangerous product. But they
20 also touch on the very issue of foreseeability, the way how
21 these children have been getting injured. And to find that
22 Hunter Douglas knew of that information, all of that is
23 analysis that became part of his opinions and he incorporated
24 in this case.

25 THE COURT: Okay. Thank you.

1 Getting back to the alternative. So I just want to
2 make sure what your position is. It's your position that once
3 the PermAssure wand was made available, that Hunter Douglas had
4 a legal obligation to stop selling the other alternative and
5 offer only the wands to anyone that wanted to buy its products?

6 MR. SANTIAGO: They were -- they were liable for any
7 future injury that might result from the use of that corded
8 blind that resulted in death or injury.

9 THE COURT: Well, whether or not -- but that basis of
10 liability would -- your theory of that basis of liability is
11 that they were unreasonable in not offering only the wand
12 product for all of their blinds.

13 MR. SANTIAGO: Right, yes, absolutely. And that
14 dovetails into the issue of negligence because part of
15 negligence you have to show that there was unreasonable danger
16 in the design of the product.

17 THE COURT: So if a customer, taking a hypothetical
18 example. Say the proverbial person with arthritis that Mr.
19 Williams provided. If that person wanted for their own
20 purposes to get the cord, your position would be, as of the
21 time the PermAssure wand was offered, that they should have
22 said, no, you cannot have that cord. We only make the wand
23 available.

24 MR. SANTIAGO: Right, that's -- that's -- that's the
25 best decision in an array of decisions, because they had a

1 couple of other devices there that slightly reduced the risk of
2 strangulation. They had some other tensioning devices. Dr.
3 Wright will talk about this. In the interest of economy, I
4 didn't ask him about those things here. But his position would
5 be that those are good, but not good enough because you have
6 the wand that does everything.

7 But if you are going to have a situation where someone
8 really needs that, then you sell the tensioning device. But
9 you never sell the wand ever with just the hanging loops.
10 That's just unacceptable when you have three other different
11 versions of it that can improve safety and one that eliminates
12 it completely.

13 THE COURT: Okay. Thank you.

14 MR. SANTIAGO: Thank you.

15 THE COURT: Mr. Williams, you have a short rebuttal.

16 MR. WILLIAMS: Yes, your Honor. We'll make it short.

17 If I may be of assistance, your Honor, I think with
18 respect to your question about what Dr. Wright -- the only
19 thing that he notes in his report or said in his deposition
20 that he reviewed in the way of information concerning other
21 incidents is something that was attached as Exhibit 9 to his
22 deposition. It's referred to at page I think 3 of his report.
23 It's the analysis of fatal incidents associated with window
24 covering cords from 1996 to 2000.

25 This is all after our manufacturing. But still that's

1 what it was. And this was something that I referred to in my
2 questioning with him. It was a joint effort between Window
3 Covering Manufacturing Association and the CPSC, to go back and
4 look at literally every -- CPSC has this database. You may be
5 familiar with it. The NEISS database. Refers to National
6 Electronic Injury Surveillance System.

7 And the CPSC has a tool that is far more powerful than
8 any manufacturer in terms of identifying hazards in consumer
9 products. They have random -- not random. They have
10 specifically selected emergency rooms around the country,
11 hundreds of them, that they get information on. Every
12 admission to those ERs involves a questionnaire. And if there
13 is a consumer product involved in the accident, that makes its
14 way to this database. So the CPSC using this database was the
15 one who was first able to say, hey, we have an issue here with
16 respect to strangulations that are occurring, and we want to do
17 something about it.

18 So each of those incidents the CPSC creates what's
19 called an IDI, an in-depth investigation. So this document
20 that I am rambling around and referring to that Dr. Wright
21 cited as the only prior incident document that he relied upon
22 is this analysis of certain number of IDIs, all of which post-
23 date the manufacture of these blinds in 1995. But that's what
24 it is.

25 You have articulated a question, and you didn't get an

1 answer to it. Dr. Wright will come in, if allowed, and say
2 that the cord and chain is less safe than the wand. We don't
3 need him to say that because that's what we say, because that's
4 why we developed the wand, to provide the option to people who
5 had children, wanted to eliminate cords for any reason.

6 Dr. Wright, his aha, his, did this blind have a cord
7 and chain? Yes, it did. Aha. That blind is defective.
8 That's the classic example of the hindsight of someone coming
9 into a lawsuit. There is a hundred percent risk of injury or
10 death when you had an injury or death.

11 Of course, if the Padillas had not had a cord and
12 chain on this window blind in this home on this day, Max
13 couldn't have been strangled on that. That's not the analysis.
14 You asked the right questions. You got non-responses from Mr.
15 Santiago because the fact of the matter is, Dr. Wright hasn't
16 done that analysis. He can stand up and argue all he wants
17 about the merits of offering both versus eliminating the cord
18 and chain. But his statements of what the law is is simply
19 wrong.

20 He says the case law says, if you got a better
21 product, you have to use it. No. Then there would be no need
22 for the risk utility. There would be no need for the risk
23 benefit analysis. That's what you are weighing. There would
24 be no weighing necessary if every time there is a marginal
25 increase in the safety of a product, you throw out the

1 bathwater.

2 That's not the law in Illinois. That's not the law
3 anywhere. And the law here is, you do have to evaluate. And
4 once again, negligence is a little bit different. But in
5 general, the principles of risk and utility would still come
6 into play, in this case in a negligence lawsuit. And whatever
7 Mr. Santiago might want to say or what I want to say, Dr.
8 Wright hasn't done that evaluation.

9 THE COURT: What about the argument that plaintiff
10 poses that basically, you know, look, this is an option that
11 Hunter Douglas was offering everyone free of charge anyway.
12 So, of course, if Hunter Douglas -- if it wasn't economically
13 feasible for them to do so, they wouldn't do it. So clearly
14 it's cost effective. You know, on a cost benefit analysis it's
15 worthwhile for them to do it or it wouldn't harm them to do it
16 because otherwise why would they offer that option to everyone?
17 That's basically the gist of their argument.

18 MR. WILLIAMS: Because it harms my mom who has to get
19 up on the stepladder to operate the vertical blinds in her
20 apartment with a wand if she can't have that cord and chain
21 that get down to her height. Because there are people, a wide
22 array of them, who need, want a different option.

23 The cost -- the cost issue is such a red herring here.
24 That's an issue in cases where a manufacturer has failed to
25 make a change. Or, you know, the old argument that would have

1 cut any profits by \$2.50, and you, therefore, didn't make the
2 change because you didn't want to loose those \$2.50 window
3 blind.

4 That's not what we're doing here. We've got a more
5 expensive safety option that we're offering at no charge. We
6 are offering choices. And that argument completely ignores, as
7 they want to do, the question of whether or not consumers have
8 the right to have a choice of different options. Some of them
9 are just going to be for convenience. Some of them may be for
10 esthetics. They don't have children around, and they like the
11 look of a cord and chain hanging down instead of a wand. But
12 some definitely may be for safety and utility reasons as well.

13 And so the question in this case, which we are
14 prepared to argue about and cross-examine about at trial, is
15 whether that decision by Hunter Douglas, which by the way every
16 other manufacturer is there or behind us in that regard --
17 whether that was reasonable or not. But Dr. Wright hasn't done
18 an analysis. He has not --

19 THE COURT: So what sort of analysis should he have
20 done for him to offer an opinion like that?

21 MR. WILLIAMS: The one that you asked Mr. Santiago
22 about. He should have at some level. And if he doesn't do it
23 at the level that Dr. Ray did in her analysis, at some level at
24 least look at how much of a risk there is. We know the risk is
25 severe. You know, death or serious injuries. So we know the

1 severity is potentially great.

2 What he doesn't look at, has no idea about, he is
3 suggesting there might be hundreds of thousands of corded
4 window coverings in this country when there are probably a
5 billion, couldn't be a clearer indicator of how little he's
6 looked at this.

7 I mean, if there is ten fatal incidents per a thousand
8 corded window coverings, that's one level of risk. If there
9 are a hundred 40 per billion window coverings, that's a
10 different level of the risks. Okay. We'll argue about that.
11 And we'll decide, get in front of the jury, whether that's a
12 risk worth continuing to allow people to make for themselves,
13 as opposed to taking it away.

14 But he hasn't done that evaluation. He has no idea
15 how risky it is. Like I said, his is the 100 percent risk
16 factor. He comes in after an accident and says what's very
17 easy to say; and that is, this accident wouldn't have happened
18 if there had been a wand on those window blinds.

19 The last point, your Honor, is, it's -- I think
20 probably goes beyond the Daubert qualifications of Dr. Wright.
21 But what you didn't hear him say with all of his talk about the
22 Consumer -- he called protection, Consumer Product Safety
23 Commission, is that cords and chains under the standard that
24 the CPSC is involved in implementing in 2013 are still allowed
25 in these products. CPSC steps in and bans products all the

1 time. They have not done so here. There have been safety
2 improvements. The options that are offered, the tension
3 devices the consumers can have. All of those things go to make
4 the products safer. But this product is still capable of being
5 sold today. And CPSC certainly knows how to step in if it says
6 there -- it's unreasonably dangerous, as Mr. Santiago would
7 have you believe.

8 Thank you, your Honor.

9 THE COURT: I gave defendants a little more time. I
10 am happy to give you a couple minutes, couple more minutes as
11 well.

12 MR. SANTIAGO: Your Honor, just one point, Judge. I
13 believe that just because the Consumer Product Safety
14 Commission does not issue a recall doesn't take him off the
15 hook with respect to producing a safer product. That's a
16 unique obligation of all corporations that are manufacturing
17 products for sale to general consumers. They are the
18 preeminent watchdog group with respect to product design.
19 They've raised holy hell with this. And they were able to get
20 at least something done. But it's still not enough. And that
21 responsibility is borne by Hunter Douglas in this case, Judge.

22 Thank you.

23 THE COURT: Thank you. Thank you. I will take the
24 motion under advisement.

25 Let's take a quick five-minute break before we proceed

1 to the arguments as to Stuart Stalter.

2 MR. WILLIAMS: Thank you, your Honor.

3 (Brief recess.)

4 THE COURT: We will now proceed to arguments as to
5 defendant's motion to exclude testimony of Stuart Stalter.

6 MR. WILLIAMS: Thank you, your Honor. I am assuming I
7 am going first?

8 THE COURT: You are. You have 30 minutes. And then
9 plaintiff will have -- Mr. Jauregui, you will have 30 minutes,
10 and then rebuttal for five minutes.

11 MR. WILLIAMS: This motion presents several different
12 issues, but they both arise out of the Daubert and Kumho Tire
13 decisions, addressing this Court's obligation to serve as a
14 gatekeeper for expert witness testimony.

15 Stuart Statler -- and it's Statler, not Stalter -- is
16 not an engineer. He is a lawyer. He is a former commissioner
17 of the Consumer Product Safety Commission. And he is being
18 called to give testimony that in part is no longer relevant in
19 this case and in part is without any foundation under Daubert.

20 It's important to take a step back and look at this
21 case to understand Mr. Statler's role in it. When he was
22 retained by counsel for plaintiffs, the Window Covering
23 Manufacturers Association and Window Covering Safety Council
24 were still defendants in the case. Mr. Statler has been
25 retained to and in previous cases has given testimony relating

1 to the Consumer Product Safety Commission, how it interacts
2 with manufacturers in general, associations such as the WCMA
3 and the WCSC in particular. And he's largely been allowed to
4 testify just in that area, certainly as it relates to the area
5 of consumer products and window blinds in particular.

6 The WCMA and WCSC are no longer in this case. They
7 moved for and got summary judgment a couple of years ago. So
8 when you look at his report, you see a good deal of it has to
9 do with their conduct, and in particular the implementation of
10 the retrofit campaigns and the safety standards which he --
11 which he criticizes.

12 Those are not issues in this case. There is no claim
13 in this case under plaintiff's negligence or breach of warranty
14 theory having to do with retrofit campaigns or safety
15 standards. The claims here that remain are only against Hunter
16 Douglas. And he is not someone who's qualified to offer
17 opinion testimony.

18 On top of that, as other courts have recognized, a
19 problem with Mr. Statler is his difficulty in refraining from
20 basically being an advocate and giving argument. He writes
21 reports. And if allowed to testify, he testifies in a way that
22 is more appropriate for counsel in closing argument than it is
23 for an expert witness. And so he's been limited in that
24 regard. Okay.

25 Who is he? He is a former CPSC commissioner. He

1 acknowledges he is not an engineer or a scientific expert of
2 any sort. So right off the bat he admits that he doesn't have
3 the engineering background, qualifications, for example, to
4 perform the sort of risk benefit analysis that's necessary to
5 evaluate whether Hunter Douglas' conduct in this case was
6 reasonable.

7 He has background, and he arguably has expertise in
8 how the CPSC functions. That's why in the unpublished Rountree
9 decision that plaintiff's counsel cited to you for proposition
10 for which it does not stand, that I will talk about in a
11 minute, but which we attached to our reply brief, he was
12 allowed to testify with respect to matters dealing with the
13 safety standards that the CPSC created with the WCMA and the
14 WCSC who were also parties in that case. Other than that, his
15 testimony was largely limited and excluded.

16 But those safety standards, as I said, are not an
17 issue here. WCMA and WCSC are no longer part of this. So the
18 Court has to determine if he meets the standard under Daubert
19 and Kumho Tire with respect to what's left of his testimony as
20 it relates to Hunter Douglas. And clearly it does not meet
21 that standard.

22 With respect to the design of the blinds, he was asked
23 questions about that in his deposition. And at page 3947 of
24 his deposition -- this was cited in our opening brief, your
25 Honor -- he was asked whether he had any background in

1 designing window blinds. He said he did not. He's never taken
2 any steps to familiarize himself with the operating systems to
3 understand how different types of blinds are raised and
4 lowered. He is not an engineer of any sort. He is not a
5 scientist of any sort. He is not comfortable or qualified in
6 his words to testify with respect to the operating mechanisms
7 that the cord or the chain or the wand or some other device
8 controls.

9 So in his analysis I lumps together horizontal blinds
10 and vertical blinds. But he acknowledges that he has no
11 experience to allow him to answer questions about what the
12 differences are between them or how those products perform.

13 He's not a product designer. He's never designed a
14 product that was taken to market. He's never taught design in
15 any school. He has no training in human factors. He's never
16 designed a warning to go on a vertical window covering or any
17 other product.

18 And most importantly, he's -- and this goes to what we
19 were talking about with Dr. Wright a minute ago. He's done no
20 studies, for example, of consumer usage of window coverings,
21 consumer preferences or other safety aspects that could be
22 related to the question of whether cords and chains should be
23 completely eliminated on all window blinds, as opposed to made
24 available alongside other safer options such as the wand.

25 THE COURT: Mr. Williams, let me ask you this. And I

1 will ask plaintiff's counsel too. What do you think he is
2 actually going to testify at trial?

3 MR. WILLIAMS: I tried to parse that out because so
4 much of his report -- you know, we used the WCMA and Hunter
5 Douglas and other members of the industry. And I believe, your
6 Honor, to answer that question, if you look towards the
7 conclusion of his report, you will get an idea, the page 20 --
8 if you like a copy and don't have it in front of you, your
9 Honor, I'll be happy to, but I'll put it on the --

10 THE COURT: I have it.

11 MR. WILLIAMS: -- whatever the improved version of the
12 Elmo is called.

13 I think that first paragraph is as good an answer to
14 your question as I can come up. And I am speculating somewhat.
15 As you see he says in his fashion: The prolonged inaction of
16 both Hunter Douglas and the WCMA in the face of child
17 strangulations from vertical blinds reflects a flawed response.
18 In the context of a product known almost from the outset to be
19 fraught with a foreseeable risk of children being strangled to
20 death, such conduct belies due care, giving his legal opinions
21 there.

22 Moreover, it contravenes principles of responsible
23 practice amongst manufacturers and by the association which
24 purports to represent them, as a result safety was seriously
25 compromised, both in theory and in fact. An unsuspecting

1 three-year-old was needlessly allowed to strangle and die from
2 the wholly foreseeable chain of events set in motion by this
3 kind of systemic disregard for safety at all levels and over
4 such a long period time.

5 I really can't summarize for you any better what I
6 think he would say if allowed to testify. And as this
7 paragraph, which is admittedly only a portion of his report,
8 but as this summarizes, clearly one of the things that he has
9 offered to criticize in the past and been allowed to sometimes
10 and not other times, is the inaction or the slow action of
11 manufacturers to the strangulation hazard generally, and the
12 hazard on specific products in particular. Because that's an
13 issue in some cases where you have a product that, you know,
14 doesn't have a safety component or is missing some feature,
15 he's offered testimony that the manufacturer should have known
16 sooner about strangulation risks and should have acted more
17 quickly.

18 Here I have a harder time imagining what he -- what
19 the relevance might be of this because of the difference in
20 this case that we've been talking about this morning; and that
21 is, the wand was offered. It was not just in development. It
22 was in manufacture. It was in the sales books. It was
23 available to any consumer who wanted it.

24 And so whether Hunter Douglas should have had it in
25 1992 or 1995 isn't material. It was available when these

1 blinds were purchased and ordered and sold. So I -- I am
2 concerned because what Mr. Statler has shown a propensity for
3 doing in the past is coming in and giving sort of a narrative
4 monologue criticism of the WCMA and various individual
5 manufacturers. And in this case he will do it, if allowed,
6 with respect to Hunter Douglas.

7 I'm glad you will ask that question because I am
8 wondering myself exactly what he would be offered to testify,
9 because he admits that he can't do and hasn't done any sort of
10 the risk utility, risk benefit analysis that you were asking
11 Dr. Wright about. So he doesn't add anything there.

12 He has experience at the CPSC. Once again, in this
13 case it's really interesting because so many issues present in
14 more typical products liability cases aren't involved here
15 because of the presence of this alternate design. In other
16 words, none of the should have done this early or you were too
17 slow about going about this are present here because plaintiffs
18 have to concede. Brenda Davis could have bought a set of
19 vertical window blinds with a wand in 1995.

20 So they are left to argue, as we talked about, that
21 the options should not have been made available. He hasn't
22 done any analysis to determine or to evaluate whether it was
23 reasonable to continue to give that option. He simply will
24 criticize the WCMA, and SC and sort of lump Hunter Douglas in
25 together with them. And I am sure he will, if allowed, come in

1 and give an opinion that the cords should have been taken off
2 of this blind and only should have been sold with the wand, or
3 some other cordless option. But he has demonstrated that he
4 doesn't have any basis for offering expert testimony to support
5 that.

6 He will -- pages 8 and 9 of our brief, he acknowledges
7 that he hasn't done any study or any testing that we could ask
8 him about in the way of risk benefit analysis. And the final
9 subject that he seems to want to touch on in his report is the
10 issue of warnings. And the -- on that subject, I asked him
11 whether he had an opinion as to what warnings should have been
12 on the product or where it should have been. And he didn't
13 have such an opinion. He had not formulated a warning.

14 I asked him in his deposition what one should say? He
15 asked for a five-minute break. He scratched something together
16 and told me that that was the first he thought about it, and it
17 wasn't as good as he like. But the important thing was, he
18 hadn't -- he hadn't done that before rendering his report and
19 reaching his conclusions.

20 So he'll try to come in and testify as he has here.
21 And I think the best place to look is to the other courts that
22 have addressed Mr. Statler before, because they have been
23 confronted with similar issues. And we cited one of those
24 courts in our moving papers, the Hayes versus MTD Products
25 case. That's a Western District of Kentucky case in 2007.

1 It's at page 10 of our brief.

2 And Mr. Statler's testimony was completely excluded
3 there. We set forth in a block quote the Court's reasoning,
4 and I won't take the time today to read the whole thing. But
5 it basically says what you need to understand; that is, Statler
6 does appear to be the quintessential expert for hire. It notes
7 his qualifications. He's got a pedigree, went to Amherst, went
8 to Harvard law school. He was on the CPSC for a number of
9 years.

10 So qualifications for something are certainly not
11 deniable. I mean, he's got -- he's got experience and
12 expertise. And it's probably in the area of how the CPSC works
13 and how it works with various manufacturing and trade
14 organizations, as well as individual manufacturers. But where
15 it doesn't get him is to an evaluation of the reasonableness of
16 the conduct of someone such as Hunter Douglas in offering the
17 options that it offered.

18 And so we cited that case, the Hayes case, in our
19 moving papers. In their opposition, the plaintiffs came back
20 and announced that Hayes case was misleading, and it involved a
21 different type of product. And in fact, that Mr. Statler had
22 been offered to testify and had been allowed to testify in
23 couple of other cases.

24 In their brief at page 7 they stated: Mr. Statler's
25 testimony meets the requirements set forth in Rule 702 because

1 he is qualified, his testimony is reliable, and will assist the
2 jury like in the Rountree and Brown cases. Okay. So let's
3 take the Rountree and Brown cases. Let's take the Brown case
4 first.

5 In that case, the Court found that the motion to
6 exclude Mr. Statler was premature. It was -- under local rules
7 a motion should be made in limine with the final pretrial
8 order, and that was not yet due. And the Court denied the
9 motion to exclude him without prejudice stating the Court
10 expresses no opinion on the merits of these motions, which can
11 be refiled with minimal effort as part of the final pretrial
12 order. That was the ruling in the Brown case they cited.

13 Then they cite the Rountree case, and that was also a
14 window blinds case. It was brought against the Window Covering
15 Manufacturers Association, Window Covering Safety Council, and
16 a Chinese manufacturer, the Ching Feng, C-h-i-n-g, F-e-n-g,
17 Blinds Industry Company Limited. And in that case, Dr.
18 Statler's testimony was aimed at the Window Covering
19 Manufacturers Association and Window Covering Safety Council.

20 So as was the case here when we started out, those two
21 organizations were in the case. And the Court in an opinion
22 that we -- that's not published but plaintiffs referred to it
23 and represented that it held that he was qualified to testify.
24 So to correct that misstatement, we attached it to our reply
25 brief. And you have it in front of you.

1 And basically the Court goes through a good analysis
2 there of all of the legal conclusions that somebody owed the
3 plaintiffs a duty, and that the duty was breached, that Mr.
4 Statler would offer, if allowed, but was not going to be
5 allowed to testify to because they went beyond the scope of
6 proper expert testimony.

7 And the Court in that case found that he was entitled
8 to testify as to the relationship between the WCMA and the
9 members of the industry. He was entitled to comment generally
10 on the nature of the safety standards, again that are not at
11 issue in this case. And specifically noted that he may have
12 helpful knowledge of customs and practices pertaining to the
13 development of safety standards. So that's all well and good.
14 He was allowed to testify to that.

15 He was precluded from conjecturing as to the jury and
16 the Court noted that an instruction may need to be given to
17 limit some of his comments. But to the extent that the WCMA
18 was arguing Rountree, that Statler had to conduct an
19 investigation beyond what he had in front of him, the Court
20 said that's fair game for cross-examination.

21 The Court finally noted that the inflammatory
22 statements contained in his report, which we see almost
23 verbatim copies of sometimes and in our report would be
24 excluded. He characterizes the WCMA as a sham organization and
25 a facade. The Court said that's not admissible.

1 He characterized the plaintiff and the decedent in
2 that case as one more victim of the WCMA's negligence. In this
3 case if you turn to page 20, on the screen, the unsuspecting
4 three-year-old was needlessly allowed to strangle from the
5 wholly foreseeable chain of events set in motion by the
6 systemic disregard for safety at all levels and over such a
7 long period of time.

8 Your Honor, that's the best I can tell in terms of
9 what Mr. Statler will say if he is allowed to testify in this
10 case. And because his expertise is specific to his role on the
11 Consumer Product Safety Commission, and because none of those
12 issues are present in this case, he should be completely
13 precluded from testifying unless there is an offer of some area
14 that's relevant to this case that I simply can't see.

15 The plaintiff's representation to your Honor that he
16 had been found qualified to testify in the Rountree and Brown
17 cases is simply not the case. It was not slightly off, but it
18 was simply not a true statement. They misrepresent the
19 holdings in those cases. There aren't cases that they can cite
20 to that explain how Mr. Statler could have expertise relevant
21 to this lawsuit.

22 And the fact of the matter is, he is a lawyer and a
23 former commissioner who wants to come in and argue that we had
24 a duty and breached it by allowing a choice of these operating
25 systems. And if there were a basis methodology of any sort --

1 and once again, I want to reinforce what I said earlier. I
2 don't claim that, you know, an expert can't come from the CPSC
3 and his background. Everybody isn't a materials scientist or a
4 chemist that can apply nice, simple, easy-to-follow
5 methodologies for guys like me.

6 But there has to be some rigor. There has to be some
7 scientific method of whatever science or discipline the expert
8 is operating in that you can say, here is my standard. Here is
9 my methodology. Here is how it's validated. Here is how I can
10 show you it's generally accepted in the relevant scientific
11 community. And here is how I apply it to this case.

12 If Mr. Statler is allowed to testify, he will come in
13 and give opinions as far ranging as the Court allows him to.
14 And even limiting him at trial won't cure the problem because
15 there is nothing -- there is no basis for a fair cross-
16 examination of him. He will simply try to out-argue me, and he
17 very well might succeed.

18 THE COURT: What is your understanding of what he did?

19 MR. WILLIAMS: In this case?

20 THE COURT: Yes, prepare his --

21 MR. WILLIAMS: In terms of looking at this case
22 specifically? Not much. He doesn't do a lot case by case. We
23 have not provided you with copies of his reports from different
24 cases.

25 THE COURT: I mean, he reviewed the CPSC documents

1 related to the issue of blinds and the strangulation risk,
2 didn't he?

3 MR. WILLIAMS: He had some familiarity with it because
4 it was starting when he was still on the commission. What he's
5 done, if you look at his report at page -- bottom of page 1, he
6 listed materials reviewed. He sort of did a usual here is the
7 file, pleadings, depositions, discovery responses, police
8 reports, and then a series, bottom page 2 -- and if you like a
9 copy of his report, don't have it, I will be happy --

10 THE COURT: I have it right here.

11 MR. WILLIAMS: Okay. A series of CPSC safety alerts
12 and agency press releases on strangulation hazard associated
13 with window covering cords. And then the CPSC's 11 IDIs,
14 strangulation deaths, and nine medical and coroner reports.
15 It's not clear from what period those are. An article, a
16 well-known article, from JAMA in 1997. Material from a
17 website, parents for window blind safety. That's it.

18 But when you try to take what he was given by counsel
19 for plaintiff and how he looked at it and what he used it for
20 in this case, it's hard to find much besides the two-paragraph
21 factual context that you see on page 3. He summarizes the
22 incident and when the blinds were manufactured, and that they
23 didn't have a tensioning device. And then he goes into his
24 personal background and experience.

25 So he does a very cursory summary of the facts

1 specific to this case. And as you can see, and without --
2 maybe a little bit pejorative. It's not intended to be
3 sarcastic. Without belaboring it, beginning at page 3,
4 personal background, experience, he goes into that for a couple
5 pages and then launches right into his consideration of the
6 design of the product. He has a listing of considerations for
7 the design that frankly at page 7 and 8 might have been helpful
8 if Dr. Wright had applied these. Looking at whether a design
9 can be made safer, severity of the risk, comparative safety of
10 the product, cost benefit considerations.

11 He didn't apply those in any scientific or rigorous
12 way here, but at least he acknowledges them and acknowledges
13 that these are something that an engineer should do. But as he
14 himself says, he's not an engineer. He's simply identifying
15 what's been suggested by others over the years as factors that
16 should be considered in evaluating the safety of a product.
17 And then he goes into his historical what was known about the
18 risk and all that.

19 And I suppose playing devil's advocate, I could see
20 him having some -- if he were reined in and if the inflammatory
21 and the argumentative stuff was kept out, I can see him perhaps
22 having some role in chronicling the development of knowledge
23 about the strangulation hazard of corded window blinds if there
24 were an issue as to whether or not a different design should
25 have been arrived at sooner. In other words, if somebody was

1 too slow or somebody is being criticized for not offering a
2 product.

3 But since that's not the case here, since Hunter
4 Douglas offered the PermAssure wand, he doesn't criticize the
5 fact that they offered it. He acknowledges that it would have
6 prevented the accident in this case, and it was a very
7 significant safety break-through. And all he's left to argue
8 is that basically, as Dr. Wright would, that the option should
9 not have been made available to consumers.

10 And whereas Dr. Wright's big problem is, he's never
11 done the analysis to determine what the risks are, what the
12 benefits are, and do any balancing that you have to do in
13 deciding whether someone is negligent or not, in Mr. Statler's
14 situation, I don't think he'd be qualified to do that from an
15 engineering standpoint by his own admission.

16 So he pays lip service to the factors. He doesn't
17 apply them anyway. If you go through his report, you will see
18 that after he recites them, he basically goes into his argument
19 section of his report.

20 And so I think, and I am sure what your Honor -- I am
21 not sure. What I suspect, your Honor, one of the things you
22 are wondering is, you know, if Wright doesn't testify on the
23 subject and Statler is not qualified to, who will? And that is
24 a problem that I see too. But it's not a problem that can be
25 resolved by, you know, cutting it in half or allowing some

1 testimony to come in if it doesn't meet standard Daubert.

2 And for different reasons, Mr. Statler doesn't meet
3 the Daubert standard because whatever opinions he may wish to
4 give -- and I am anxious to hear them clarified in a minute --
5 whatever he may wish to give, he isn't an engineer. He is not
6 entitled to give any opinions on the issues that are relevant
7 to the jury in this case, whether Hunter Douglas was reasonable
8 in continuing to offer the cord and chain option as well as the
9 wand option.

10 And so I -- even aside from his argumentative problems
11 that the courts have recognized in other cases, I have a hard
12 time imagining what he could add to this case that he is
13 qualified to testify to.

14 THE COURT: Okay. Thank you.

15 I will start off with the question that I asked --

16 MR. JAUREGUI: Certainly.

17 THE COURT: -- Mr. Williams, which is, what is he
18 going to testify to at trial?

19 MR. JAUREGUI: Mr. Statler is a renowned safety and
20 regulatory expert. And in this case he will be offering
21 opinions that the blind at issue was unreasonably dangerous for
22 a number of reasons, including irresponsible corporate
23 practices; the issue of warning signs, that it had insufficient
24 warning signs. So those are the primary duties, and I will
25 touch upon each one of those during my presentation, Judge.

1 THE COURT: Go ahead.

2 MR. JAUREGUI: I heard primarily two reasons as to why
3 Mr. Statler should not be allowed to testify. One, because he
4 is a lawyer; and two, because he appears to be too much of a --
5 has too much passion when he advocates for the issue of safety.

6 I think Mr. Williams gives the Court very little
7 credit that if your Honor were to allow him to testify, that he
8 is going to be totally getting out of hand, and he will be
9 uncontrollable. While I believe initially that he is qualified
10 to offer his testimony on every single issue that he touches
11 upon his report, if the Court finds that there is some issues
12 that may sound inflammatory, such as the sentence Mr. Williams
13 highlighted, then it can either be rephrased or it can be
14 redacted. Those are issues that we can deal with.

15 But to keep him out of this case as an expert, as a
16 safety expert, I can hardly think of a person who has dedicated
17 his entire professional life to the issue of safety issues,
18 including a seven-year term that he serves as a commissioner at
19 the United States Consumer Product Safety Commission,
20 regulating the very same problems which are at issue in this
21 case and which he notes in his report that he was fully aware
22 when this issue first began to arise in the early 1980s. I
23 don't know who would qualify as a safety expert to talk about
24 the issue of these blinds, Judge.

25 Under Illinois law, a product can be proven to be

1 unreasonably dangerous using the following determination:
2 Whether the manufacturer's conduct was reasonable. The
3 question is whether in the exercise of ordinary care the
4 manufacturer should have foreseen that the design would have
5 been hazardous to someone. That's Jablonski versus Ford Motor
6 Company. That's controlling Illinois Supreme Court law instead
7 of Illinois as to what constitutes unreasonable dangerous
8 product.

9 Now, Mr. Statler has looked --

10 THE COURT: Give me the citation for that.

11 MR. JAUREGUI: Yes, your Honor. It is 955 N.E.2d,
12 1155, 2011.

13 I am going to retract for a minute, and I'll come back
14 to that case in just a second, Judge. First I do want to
15 apologize to the Court because there is a miscited, the
16 proposition in Brown. Mr. Williams is correct, and we concede
17 that Mr. Statler was never officially clear or declared that he
18 could testify as an expert in that case. The Judge left that
19 issue open for the appropriate time at trial when motions in
20 limine would be filed. Mr. Statler never got to testify in
21 that case because it settled two weeks shortly after the Judge
22 had deferred on that issue.

23 As to the issue of the Rountree case that I want to
24 clear up to, in that case -- we cited that case for the
25 proposition that Mr. Statler has significant experience that he

1 worked extensively in the area of window blind covering safety
2 issues. And those issues came to bear in that case.

3 They filed a motion in limine in that case. And the
4 Judge was fully aware at the time -- this is a case, the
5 Rountree case -- it's a case that was decided after the Hayes
6 case. And it is important to know that the holding of that
7 case, thank you to the courtesy of Mr. Williams here, on page
8 10 of the opinion that he provided, it says:

9 While Statler's legal conclusions and inflammatory
10 remarks of the type discussed above would be excluded,
11 wholesale exclusion of Statler's testimony is not appropriate
12 here. Even though the district judge in Hayes found that the
13 Statlers appeared to be the quintessential expert for hire,
14 they find that an expert testifies for money does not
15 necessarily cast doubt on the reliability of his testimony.

16 Furthermore, in Hayes, Statler was prepared to offer
17 opinions regarding lawnmower safety, a topic which I think is
18 not relevant in this case. That is the only case that
19 defendants have pointed out in which Mr. Statler has been
20 excluded in over his 40 years that he has been going around the
21 country offering opinions as a safety expert.

22 This is not a lawnmower case. Lawnmowers are not
23 found in the bedrooms of children. This is a case about a
24 window blind, that it was dangerous at the time it left the
25 manufacturer's hands.

1 Now, there -- the credentials of Mr. Statler and his
2 experience are set out in the first pages of his report where
3 he extensively details the appointment to the U.S. Consumer
4 Product Commission, the type of work that he did while he was a
5 commissioner there. The fact that he was one of the first
6 persons that was involved in drafting the underlying work that
7 later on became -- excuse me.

8 He wrote and edited the report for the interim report
9 recommending the enactment of the Child Protection Act. That
10 was back in the early '80s, Judge. On page -- that's at page 4
11 of his -- of his report.

12 On page 5, in addition to all the work that he had
13 done in the U.S. Consumer Product Safety Commission, Mr.
14 Statler also noted in the -- on page 5, there the first
15 paragraph, of the type of work that he has done as a partner
16 and consultant at the A.T. Kearney from 1986 to 1999. And in
17 his -- in that capacity, he was in charge of product liability
18 and product risk management, much of his work consisted of
19 advising Fortune 500 and other firms about product risk, help
20 them avoid downstream liability. He also assisted companies
21 and their legal counsel when confronted with a product already
22 sold and in consumer's hands which constituted a new risk and
23 hazard.

24 We are not offering Mr. Statler as a scientific
25 expert. His knowledge is not a scientist. He is not an

1 engineer. We know that. We are offering him as an expert
2 under Daubert as a person who possesses specialized knowledge
3 due to his or her skill, experience, training and education,
4 that will assist the trier of fact to understand the evidence
5 or determine the facts in issue.

6 That is by virtue of the work that Mr. Statler has
7 done as a member of the U.S. Consumer Product Safety
8 Commission, the extensive work that he has done in the area of
9 product safety, consulting on various cases, consulting with
10 companies. That gives him the specialized knowledge that under
11 Daubert in -- that under Daubert qualifies him to testify
12 before the Court.

13 Now, what did he do in this case? What is it exactly
14 that he do in this case? What did he look at to determine that
15 the window blind covering was unreasonably dangerous? I think
16 there is some misunderstanding as to whether or not he is
17 offering opinions on the issue of design. And let me clear
18 that up.

19 On page 5 of his report, the heading, Determining
20 Whether a Risk Is Reasonable or Not, there are several factors
21 that Mr. Statler took into account. Those factors are laid out
22 in detail on page 7 of his report. First, whether the design
23 of the product can be -- reasonably be -- be safe. Whether the
24 product incorporates the design or a production error which
25 either directly causes it capable of producing needless risk to

1 safety or otherwise fails to incorporate design features which
2 might avert or significantly reduce known risk.

3 Now, that is an objective factor that he applied to
4 this case. And one of the things that he did, whether or not
5 this product was unreasonably safe, he went back and looked at
6 the data from the U.S. Consumer Product Safety Commission. And
7 the U.S. Consumer Product Safety Commission is reliable data
8 because all the experts have relied on that data.

9 One of the things that he found was that consistent
10 reasons in 1980s, the danger of strangulation from window blind
11 covering has been recognized as one of the most pernicious and
12 dangerous -- and dangerous, unreasonably dangerous, that young
13 children face. Now, that is well documented. Hunter Douglas
14 knew about it. They have been -- Hunter Douglas was one of the
15 founding members of the United -- of the Window Coverings
16 Manufacturers Association. They were also a founding member of
17 the Window Covering Safety Council.

18 So whatever information filtered between the U.S.
19 Consumer Product Safety Commission and those two entities,
20 Hunter Douglas was made aware of that. Between 1994 and 1995,
21 Mr. -- the vice president of sales for Hunter Douglas, he was
22 the president of the Window Covering Safety Council.

23 So all of the information about the defects, the
24 history of strangulations, it was known to Hunter Douglas.
25 Mr. Statler went back and looked at the history of that data

1 and then assessed whether in light of that knowledge it was --
2 whether or not Hunter Douglas took the necessary actions to
3 correct risk. And as he went back and started looking at the
4 data, Mr. Statler concluded that it did not, that Hunter
5 Douglas did not, even though they knew about the known risk of
6 strangulation to young children, that they failed to correct
7 the risk because they did not correct the problem.

8 They knew that -- you know, let me address this issue
9 here. The risk of strangulation in this case comes from the
10 cords, period. Whether they are from horizontal blinds,
11 vertical blind, Venetian blind, any type of blind. If the cord
12 is too long to allow for the formation of a loop where a child
13 can get his head caught in, then that is -- that is the risk
14 that we are addressing in this case.

15 I know that defendants in this case are trying to make
16 that distinction. There is no distinction. For purposes of
17 the danger, in assessing whether or not the risk was an
18 unreasonable risk presented to unsuspected young children,
19 there is no difference here. A cord is a cord. It doesn't
20 matter whether it comes from a horizontal blind or a vertical
21 blind.

22 Another factor that Mr. Statler considered, the
23 severity of the risk. Well, I think Mr. Williams has
24 acknowledged that the risk is very severe because it's either
25 serious bodily injury or death. We know from the reports from

1 the U.S. Consumer Product Safety Commission that over a hundred
2 and 70 children had died as of 1996. And then the Journal of
3 Medical Association did a ground-breaking study indicating that
4 the number of deaths had been under-estimated. And they
5 estimated that the number of deaths was approximately 359
6 deaths from strangulation from window blind cords.

7 Now, that is information that was produced by Hunter
8 Douglas. They had that information in their archives, and they
9 were aware of that information.

10 The vulnerability -- the vulnerability of the
11 population, children. No one has suggested here that little
12 three-year-old Max had fault in this accident, because they
13 can't. I do not know what kind of fault they are going to
14 implicate here to the Padillas. But the only aspect of the
15 case that Mr. Statler considered is the nature of the risk. Is
16 that an open and obvious danger? Or is it a latent defect?

17 Again, the United States Consumer Product Safety
18 Commission has labeled window covering cords -- window covering
19 blind cords as the fourth -- it ranks as the No. 4 hidden
20 hazard to young children. So if it's a human hazard, it's a
21 latent defect. That is something that Mr. Statler considered
22 in making the determination of whether or not this was an
23 unreasonably dangerous product.

24 The functionality of it. Functionality is the same.
25 Vertical window blind serves the same function as a horizontal

1 blind. The availability of another design. That answer --
2 that -- the question to that answer has been given by Mr.
3 Williams. He admits, it's a safer design. We -- Hunter
4 Douglas made that design specifically because it was safer.
5 That's our argument in this case. What doesn't make sense is
6 why they continue to sell both products at the same time.
7 Whatever the motivation was.

8 The availability of an alternative design. That's
9 something that we already have here. That answer has been --
10 that question has been answered here.

11 THE COURT: Let me ask you something. So Mr. Statler
12 reviewed the documents produced in this case as well as CPSC
13 data. He came to the conclusion that the product was
14 unreasonably dangerous. And I guess the question is, why isn't
15 that something that the jury can do? Why do we need him to do
16 that?

17 Isn't that -- if we present or if you present the same
18 information to the jury, the CPSC data, what Hunter Douglas
19 knew or did not know about the -- what they knew about the
20 strangulation and what happened, the risks involved, what does
21 Mr. Statler add to this when a jury can review those documents
22 and come to that decision as well as he can?

23 MR. JAUREGUI: Because Mr. Statler brings a unique
24 perspective that is derived from his training, experience and
25 education and years of work that he did at the U.S. Consumer

1 Product Safety Commission. He knows how these things work. He
2 organized hearings for congressmen, for senators there. He
3 prepared testimony for them. He conducted investigations. He
4 is the -- he is in a very unique position here to explain to
5 the jury what is the historical background of the risk of
6 window covering cords, and how the industry has responded at
7 every turn of the way, and whether or not the response from the
8 industry was reasonable in light of what it did, whether or not
9 there was a responsible corporate practice.

10 THE COURT: And how is he going to -- on what basis
11 and experience will he be able to testify whether or not a
12 responsive industry was reasonable or unreasonable? I guess my
13 question is, you know, what about his regulatory authority --
14 by the way, he was a commissioner, right --

15 MR. JAUREGUI: That's correct.

16 THE COURT: -- in the early 80s.

17 MR. JAUREGUI: That's right.

18 THE COURT: And so it was way before a lot of the
19 studies came out and what not. And so he is basically doing
20 historical review of these documents.

21 And I presume at some point he has an answer to why
22 the CPSC hasn't instructed or forced the industry to go to the
23 wand altogether. I presume that's a question that was
24 answered. And he has I presume some answer for that.

25 But my concern is, what about his work as a

1 commissioner makes him more qualified than the jury to assess
2 reasonableness?

3 MR. JAUREGUI: Well, Judge, again, his
4 qualifications -- the danger that comes from window covering
5 blinds and the determination of whether or not this is an
6 unreasonably dangerous product under Illinois law, it has to be
7 gauged against the historical background of what a corporation
8 has been doing. What did Hunter Douglas know in 1995 when they
9 sold --

10 THE COURT: But you can put on that case, can't you?
11 No one is saying that you can't put on what Hunter Douglas
12 knew.

13 MR. JAUREGUI: But I can certainly do that, Judge.
14 But I'm not an expert on regulatory issues. Mr. Statler can --
15 he can answer the question as to why is it that in 1995, for
16 example, the U.S. Consumer Product Safety Commission did not
17 order a recall on all the windows. And he will tell you that
18 at the time the window -- the U.S. Consumer Product Safety
19 Commission was desperate to have some action. There are some
20 documents that we are going to introduce during the course of
21 trial that the window covering industry -- they were trying to
22 cut a deal. They had drafted an agreement.

23 THE COURT: And so his conclusion that the CPSC was
24 desperate to get some sort of action, what is that based on?
25 Is that based on his review of the documents?

1 MR. JAUREGUI: It is based on his experience because
2 he knows about the inner workings of the window -- of the U.S.
3 Consumer Product Safety Commission. The reason why they did or
4 did not recall.

5 THE COURT: Well, okay. So I just want to make sure I
6 understand. He is not going to testify to facts. He is not
7 going to testify as to what took place while he was there.
8 That's not going to be the only -- that's not going to be the
9 limit of his testimony, right?

10 You are going to ask him to talk about what he thinks
11 happened even when he wasn't there?

12 MR. JAUREGUI: That is true, Judge. But I need him to
13 explain what is the function of the U.S. Consumer Product
14 Safety Commission. How is it that the U.S. Consumer Product
15 Safety Commission is charged by law to regulate products that
16 are considered unreasonably safe. What is the historical
17 background. What is the reason for doing that. He can bring
18 that experience to this courtroom to educate the jury.

19 THE COURT: And I am not saying, and that all -- you
20 know, that all makes perfect sense to me. If he wants to
21 explain the regulatory framework, the regulatory background, if
22 he even wants to explain what information CPSC had with regard
23 to this, and how it was published. But you want him to do more
24 than that. You want him to -- from that, from those factual
25 predicates, you want him to then draw the ultimate conclusion

1 that the industry, frankly here Hunter Douglas, the only
2 defendant, behaved unreasonably in responding to those
3 concerns. And that's what I am focusing on.

4 All that other stuff previous to that, I don't think
5 there is any -- I don't think you are getting much fight from
6 Hunter Douglas, you know, on whether or not he's qualified to
7 talk about that. It's really that last thing.

8 And frankly when I do read his report, his report does
9 kind of -- you know, his whole report is permeated with
10 characterizations of that ilk throughout his report. And so my
11 question is, what specifically about his experience at CPSC
12 allows him to draw that conclusion that it's -- that the
13 industry practice is unreasonable?

14 For example, did he compare it to the reaction of
15 other industries in other types of similar situations? Did
16 he -- and if so, what is that? I don't see that in his report.
17 What does he base it on other than just kind of his gut
18 instincts, if it is that, that the response is unreasonable.

19 MR. JAUREGUI: Well, Judge, on -- find the right page,
20 your Honor.

21 THE COURT: For example, perhaps, you know, there is
22 other things I suppose he could have done if he didn't do it.
23 And maybe he did. I don't know. But, for example, he could
24 have said, well, you know, a similar industry is this industry.
25 And in fact, as soon as CPSC had out those notices, by gosh, in

1 that industry they completely changed their way. You know, and
2 in comparison this industry didn't.

3 Or, you know, as CPSC commissioner, we were asked to
4 apply certain factors, determine whether or not we are going to
5 issue a recall and when we weren't. And this is what those
6 factors were that I used in my role as CPS commissioner. I
7 have reason to believe that's what they continued to use
8 because whatever guidelines haven't changed. And, therefore,
9 in applying that to here, I believe as follows.

10 But I just don't -- I don't see that in his report.

11 MR. JAUREGUI: That is exactly the kind of experience
12 that he brings to the courtroom and to the jury. The
13 experience that he had in regulating other dangerous products
14 and how the Consumer Product Safety Commission dealt with those
15 industries as they were regulating those products, how the
16 industries responded once these issues or flaws were brought to
17 their attention. And then to compare that to the manner in
18 which Hunter Douglas has reacted or has been reacted since the
19 issue was brought to their attention. And they -- he then made
20 the determination.

21 The jury cannot make that determination as to whether
22 or not Hunter Douglas acted within -- as a responsible
23 corporation and responded to those issues.

24 THE COURT: Okay. But then the question is, what
25 other industries did he look at? What did he compare it to?

1 Again, it's not in his report. It's unclear to me if he did --
2 No. 1, whether or not he actually did that analysis. And,
3 No. 2, if he did do that analysis, where in the expert report
4 that he talks about that analysis. Because again, it's a long
5 expert report. So perhaps I am missing it.

6 MR. JAUREGUI: Well, let me -- Judge, if I can direct
7 your attention to page 4, the first full paragraph there. That
8 answers part of your question. While serving at the helm of
9 the CPS --

10 THE COURT: You have to read more slowly.

11 MR. JAUREGUI: I'm sorry. Let me start again. Do you
12 have a copy of that report there, your Honor?

13 THE COURT: I do. I have everything right here.

14 MR. JAUREGUI: Then I don't need to do that.

15 THE COURT: You might do it. It might help her out.

16 MR. JAUREGUI: I have extra copies here. So let me
17 just do that. I have a hard copy, Judge, if you like one.

18 THE COURT: I am fine.

19 MR. JAUREGUI: All right. Page No. 4, first full
20 paragraph: While serving at the helm of the CPSC in public
21 meetings, private sessions, with affected companies and
22 industries, and in various articles I explicitly addressed the
23 critical responsibilities of manufacturers and distributors of
24 consumer products, both then and as consultant and expert
25 witness during all those years since I have consistently

1 stressed the prime importance of the companies actively
2 investigating instances of serious injury or death occurring
3 from their products. I have repeatedly emphasized the pressing
4 need on their part to focus on improving product safety through
5 changes to its design as a first principle.

6 I have also urged firms to fully comprehend and assess
7 a product's risk before ever bringing it onto the market, to
8 maintain adequate records in files of hazard investigations and
9 assessments, and to timely report safety risks to the Consumer
10 Product Safety Commission pursuant to the reporting
11 requirements of the Consumer Product Safety Act.

12 Now, that is the kind of expertise that he is very
13 uniquely positioned to educate the jury as to what is it that
14 goes on when there is a defective product. What is the
15 specific action that the commission -- that the Consumer
16 Product Safety Commission takes, and whether or not the
17 responses from the companies are in line with the requirements
18 of the regulatory framework of the commission. That is very --
19 it's very specialized knowledge that Mr. Statler has from the
20 years he spent as commissioner at the U.S. Consumer Product
21 Safety Commission.

22 I can't do that for the jury. I cannot educate the
23 jury on those issues. I might be able to pull out some of the
24 reports from the -- about children that have been strangulated.
25 But I cannot tie it up for them. I need Mr. Statler to explain

1 to the jury, okay, how many -- how many of these strangulations
2 occurred prior to 1995? What did the industry know at the
3 time? How did the industry react in respond to those deaths
4 and strangulations?

5 I can't. Only Mr. Statler can do that because he has
6 both the regulatory framework. He has the expertise. He dealt
7 with these issues as a commissioner. And he's uniquely
8 positioned to address those issues to the jury, Judge.

9 (Brief pause.)

10 MR. JAUREGUI: There is -- some of the other documents
11 that Mr. Statler looked in his report include an exhibit number
12 that has been proffered and identified for -- on our pretrial
13 memorandum, Exhibit No. 27. And this exhibit is instructible.
14 So because it is a short memo from the U.S. Consumer Product
15 Safety Commission to Jason Throne. Mr. Throne at the time was
16 an attorney for Hunter Douglas.

17 And in the remarks section it says: Ready to begin
18 the retrofit program. Call me.

19 Attached to that, it is a description of an IDI, an
20 in-depth investigation report, involving a Hunter Douglas
21 product with a continuous loop cord. That is dated July 13,
22 1995. I need Mr. Statler to explain these issues to the jury.

23 We spoke earlier about the issue of hidden hazards. I
24 need Mr. Statler to address the issues of why this incident
25 happened and why is it that Mr. and Mrs. Padilla are not at

1 fault in this case. The defendants are -- have arguments, and
2 they -- at the time of closing they will be asking for some
3 type of contributory negligence. I need Mr. Statler to explain
4 to the jury why this was a hidden hazard, what was it that made
5 this product particularly dangerous. He knows that from his
6 experience from the work that he did as a U.S. -- as a
7 commissioner, Judge. I can't do that for the jury.

8 THE COURT: Does he know that because of his work as a
9 commissioner? Or does he know that because he read the CPSC
10 documents that say that?

11 MR. JAUREGUI: It's both.

12 THE COURT: That's a 2004 document. By that time he
13 was long gone from the commission, right?

14 MR. JAUREGUI: It is both, Judge. And the document
15 that I showed you, it was -- which one was that? That was
16 1995, I believe, July of 1995.

17 Yeah, the hidden hazard, that's a 2004 document,
18 Judge. You are right in the sense that he was gone there from
19 the commission at the time that occurred. Previous document
20 that I showed to the Court is a memorandum from the U.S.
21 Consumer Product Safety Commission to one of the attorneys at
22 Hunter Douglas. And that involves an incident that occurred
23 before 1995.

24 And again, why do we need Mr. Statler? Because he
25 needs to explain what was going on with the industry at the

1 time this instance were occurring. What was the U.S. Consumer
2 Product Safety Commission. And whether or not the actions that
3 industry was taking in response to this knowledge and the
4 request from the U.S. Consumer Product Safety Commission --
5 whether those actions were reasonable and in line with
6 corporate practices, Judge.

7 THE COURT: I took up a lot of your time questioning.
8 So you can go ahead.

9 MR. JAUREGUI: I will try to wrap it up, Judge. Thank
10 you.

11 THE COURT: You can use some more time.

12 MR. JAUREGUI: I have noted the industry has been long
13 aware of this incidence. This is a document that was produced
14 by Hunter Douglas. It's a -- an incident that occurred on
15 December 1, 1983, where a child hanged himself from a window
16 blind cord. This is again a document produced by Hunter
17 Douglas, shows us that as going back as far as 1983 they knew
18 that these incidents were occurring.

19 Something earlier about the deal that the Window
20 Covering Manufacturers Association and the Window Covering
21 Safety Council was trying to reach with the -- with the
22 Consumer Product Safety Commission. This is a letter from Ira
23 B. Marcus, and it is addressed to a Michael Nemeroff Esquire,
24 Sidley Austin, and Chris Outlaw, associate counsel to Hunter
25 Douglas.

1 And the gist of it is on the first paragraph: I
2 believe it would be extremely desirable to have an agreement
3 regarding the deal the Window Covering Safety Council, Inc.,
4 information, in parenthesis, open paren, the Safety Council, is
5 trying to strike with the U.S. Consumer Product Safety
6 Commission. Such an agreement could give the commission the
7 comfort of knowing that the safety council was contractually
8 obligated to carry out the program it will be announcing and
9 publicizing.

10 This was about the retrofit campaign that Mr. Williams
11 alluded to earlier. I can't do this. I don't have the inner
12 workings, the knowledge what was going on at the commission.
13 Mr. Statler can explain this to the jury.

14 Another document that Mr. Statler reviewed. February
15 6, 1996, a letter from the U.S. Consumer Product Safety
16 Commission. It involves a product by Hunter Douglas of a
17 30-month year old child that hung herself, going back to 1994.
18 This is all relevant information before the event at issue
19 occurring in this case on -- in -- before the window blind --
20 I'm sorry -- before the window blind was sold in this case in
21 October of 1995.

22 Some of the documentation again, that Mr. Stuart
23 reviewed, May 3, 1995. It's an internal memorandum from Hunter
24 Douglas from Marvin Hopkins, the president of Hunter Douglas.
25 And they are announcing that within the last two months

1 introduce a PermAssure safety and available on all vertical
2 blinds. And we continue to seek new solutions to reduce -- and
3 we continue to seek new solutions to reduce potential accidents
4 with all our products.

5 THE COURT: I think I got the point.

6 MR. JAUREGUI: All right. Let me try to wrap it
7 upper, Judge.

8 (Brief pause.)

9 MR. JAUREGUI: Hunter Douglas in their -- in their
10 response to our motion, they cited a couple cases which I don't
11 think are relevant to this case. One of them is the Small
12 case. And that case involved an expert, rather experts. It
13 involved a person that had been exposed to some chemicals and
14 they were offering testimony of two doctors. And the Court
15 concluded that they did not meet the scientific standards to
16 qualify as experts.

17 Hunter Douglas cites that in support of the brief to
18 exclude Mr. Statler. Again, we are not offering Mr. Statler as
19 an expert -- as a scientific expert. Therefore, this case is
20 not applicable to our case.

21 THE COURT: What is Mr. Statler going to say to the
22 question of why didn't the Consumer Protection Safety
23 Commission then act and just outlaw the cords from the
24 industry?

25 MR. JAUREGUI: There are specific regulations, and

1 that will be a subject of our motion in limine. The bylaw, it
2 specifically states: The failure of the U.S. Consumer Product
3 Safety Commission to take action against a manufacturer does
4 not exclude -- does not protect them or insulate them from
5 liability under state law.

6 So it is not sufficient, and they cannot hide, they
7 cannot run and say, well, we didn't have to do anything in this
8 case because the U.S. Consumer Product Safety Commission told
9 us not to do that. Or because in 1995, the biggest risk that
10 we were facing was horizontal blinds. And, therefore, even
11 though the vertical blinds posed the same danger, we didn't
12 have to do that because specifically they didn't tell us that
13 we had to agree that. It doesn't work. They still had a legal
14 obligation to address a known defect. If the manufacturer knew
15 it existed, they should have known that.

16 That's the same reason why there is an ongoing duty
17 under Illinois law to continue to provide warnings of a
18 product.

19 THE COURT: To be clear, I am not saying that that
20 absolves the defendants in any way. What I am trying to get at
21 is, presumably Mr. Statler is being offered because of the
22 experience as a commissioner. He has come to the conclusion
23 now that it all should have been outlawed. And so the natural
24 question at least to me would be to ask him, well, why does he
25 think it wasn't. And I am wondering whether he has an answer

1 to that.

2 MR. JAUREGUI: Well, I am sure he will offer his
3 opinion on that issue, Judge. I don't know what -- what
4 opinion he will offer. I can only speculate that one of the
5 things that he is going to tell you is the commission was
6 trying to do whatever it could with its limited resources. And
7 the fact that they didn't issue straight a law to outlaw these
8 blinds is because they at least felt some level of comfort that
9 the window covering industry was attempting to do something,
10 rather than not doing anything.

11 Let me just take a quick look. I think I am just
12 about done here, Judge.

13 (Brief pause.)

14 MR. JAUREGUI: I want to address one issue to the
15 Court very quickly.

16 THE COURT: Yes, brief.

17 MR. JAUREGUI: Consumer preferences. Much has been
18 done about that issue, and we will address that issue more
19 detail with one of defendant's experts. But the issue of
20 whether or not Hunter Douglas was justified in offering the
21 window blind with the wand as an option, and what consumer --
22 whether little grandmother needs to climb on top of the ladder.
23 There is absolutely no data that Hunter Douglas has produced
24 during the course of this litigation. Either it doesn't exist.
25 If it exists, I haven't seen it.

1 So they, Hunter Douglas, is in the best position to
2 accumulate that data and to determine what are the consumer
3 preferences. It doesn't exist. So they cannot come here and
4 tell the Court, oh, for a group of people it is best for them
5 to use the -- they prefer the chain and the nylon cord. That
6 data doesn't exist. There is sheer speculation. There is
7 absolutely no basis for the representations to the Court.

8 Judge, I think that, you know, the list of items that
9 I was referring to during the course of my presentation, that
10 appears in -- that has been incorporated in a book that has
11 been published. And it's on the list of publications. I will
12 just put this here to make it quicker.

13 Preventing accidental injury. Accountability for
14 safer products by anticipating product risks and use of
15 behaviors. Appears in a handbook of human factors litigation.
16 CRC press December 2004. Those factors that Mr. Statler has
17 relied to reach his conclusions here that this was an
18 unreasonably dangerous product are relied upon by other experts
19 in the field.

20 And of course the last issue that we did not talk
21 about is the issue of warnings. There were no warnings on this
22 case. Whatever warnings there were, if there were any in form
23 of a hangtag, he will testify and will educate the jury that
24 those hangtags were not sufficiently -- did not constitute
25 sufficient notice to educate the consumer about the dangers of

1 strangulation because the hangtags were designed to be removed.

2 Their witnesses have testified to that. They were not
3 permanent. They were -- they were inserted on the -- on one of
4 the cords. And the consumers could simply remove it. If that
5 was -- and there is no proof that even one of these hangtags
6 was attached to this window blind.

7 So if they didn't have that here, and you have a
8 latent risk, then how are people supposed to know? How are Ms.
9 Davis and Ms. Roberts supposed to know? How are the Padillas
10 supposed to know who bought the house seven years later from
11 them?

12 THE COURT: And what -- aside from this prior
13 experience as a commissioner, what did Mr. Statler do to
14 analyze the issue of the sufficiency of the hangtag?

15 MR. JAUREGUI: I'm sorry, Judge. I missed the
16 question.

17 THE COURT: What analysis did he do to come to his
18 opinion about the hangtags, other than relying upon his
19 experience as a commissioner?

20 MR. JAUREGUI: It's the testimony of Hunter Douglas.
21 Hunter Douglas testified that -- I think it was Mr. Rubinoff
22 if I am not mistaken. I took his deposition some two years
23 ago. And I was asked, were there any window -- are you aware
24 of any warnings that Hunter Douglas was using at the time? And
25 he said, well, I am aware that there were some hangtags that

1 were used. But they were not intended to be permanent.

2 So if they are not permanent, those are not
3 sufficient. It doesn't constitute a valid warning. Now, Mr.
4 Statler again derived from his experience from the -- again,
5 the Consumer Product Safety Commission and from the work that
6 he has done as a safety consultant in his testifying many other
7 cases on the issue of the sufficiency of the warnings.

8 THE COURT: Okay. Very good. Thank you.

9 Mr. Williams, we are over our allotted time. I
10 apologize to the parties about that. But so you have five
11 minutes.

12 MR. WILLIAMS: And I think I can do it in that, your
13 Honor. I was also going to say with no witness here, I'd
14 rather finish today. But if you and staff would like to get
15 away --

16 THE COURT: No, no. Let's --

17 MR. WILLIAMS: Let me do it in five.

18 I don't think I need to say much because I think
19 Mr. Jauregui said most of what I wanted to. They desperately
20 want you to let Mr. Statler come testify even in some limited
21 way, so that he can come in and advocate for them.

22 You didn't get answers to any of the questions of what
23 he added. He's done no analysis. He hadn't thought about
24 warnings until I asked him about warnings at his deposition.
25 The suggestion that he needs to testify to explain to the jury

1 memos from the CPSC written after he left there, press releases
2 issued after he left there, correspondence between parties that
3 don't involve him, doesn't need much to tie it up in a ribbon.
4 He not only isn't needed for that. He wouldn't be qualified to
5 testify as to any of the examples that Mr. Jauregui just gave
6 you.

7 They want him to come in. They want him to give his
8 industry is a bad guy speech. And I am -- I want to remind
9 counsel as well as the Court that this is a case against Hunter
10 Douglas. They would like to talk about the industry. There
11 are many ways in which that will be relevant, but this is a
12 case against my client and my client alone.

13 And the areas in which he has experience don't relate
14 to the issues in this case. Mr. Jauregui read to you from the
15 Rountree opinion. And he read to you how even though another
16 Court had found Statler to be the quintessential expert for
17 hire, in this particular case Rountree window blinds were
18 involved, not lawnmowers. And so he was going to be allowed to
19 testify in some limited areas.

20 Where Mr. Jauregui stopped was what the Court in
21 Rountree said he could testify to. Next sentence says: The
22 interaction between WCMA and CPSC, the organization for which
23 Statler served as commissioner, provides support for admission
24 of some of Statler's testimony here. That's what they would
25 have allowed him to testify to had that case gone to trial.

1 The -- we heard a couple of things that we hadn't
2 heard before. All of the documents that he will attempt to
3 explain and give his light to. But at one point he said, Mr.
4 Jauregui said, he brings his specialized knowledge as a former
5 commissioner of the CPSC who will assist the trier of fact and
6 will give the opinion that the window blind was unreasonably
7 dangerous.

8 Every single question you asked after that having to
9 do with what analysis did he do, what did he look at, did he
10 evaluate injury statistics, did he consider warnings, the
11 answer to each of those was a non-answer. He hasn't done any
12 of those things because that's not the kind of expert he is.

13 He is an advocate, and they want him to come in on a
14 limited basis and then see what he can -- see what he can do.
15 And that's -- that's why we are here today. Daubert and Kumho
16 Tire don't allow for that. And it doesn't take a very careful
17 gatekeeper to keep Mr. Statler out.

18 He -- he has a very narrow area of expertise. It
19 doesn't relate to the question of whether Hunter Douglas once
20 again, last time for today, was negligent in continuing to
21 offer both the cord and chain as well as the wand option in
22 1995. And none of the things that you saw on the projector,
23 none of the reading from his report, changes the fact that
24 there wasn't a single thing that you asked, how does he bring
25 his expertise to, that counsel could answer.

1 Most of the things that he would call him to testify
2 to apparently are exactly as your Honor said, things that the
3 jury can evaluate. If the jury decides, based upon the number
4 of strangulations on window blinds generally, Hunter Douglas
5 window blinds, Hunter Douglas vertical window blinds, was such
6 that there was a great enough risk that Hunter Douglas should
7 not have made that option available -- that's in the numbers.
8 That's in the reports that both sides have and will be
9 submitting and will be putting in front of the jury. And they
10 can evaluate that.

11 We will attempt to give them some perspective through
12 our experts, in particular Dr. Ray, that the jury can interpret
13 that and come to their own conclusions. Dr. -- Mr. Statler's
14 spin on Hunter Douglas this and the industry was slow to do
15 that, just doesn't add anything. And the risk of his
16 prejudicing and inflaming the jury if he is allowed to testify
17 is too great.

18 His testimony should be excluded in its entirety.

19 THE COURT: Thank you, counsel. Thank you both.
20 Thank you, all of you actually, more than both, very much
21 today. And I really appreciated the examination as well as the
22 arguments. They were all very helpful. And the questions that
23 I asked were questions that I had.

24 So I am glad I got answers to all of them. And we
25 will see you tomorrow at 10:00 o'clock, where the roles will be

1 reversed. And then we will see where we go from there.

2 Thank you.

3 MR. WILLIAMS: Thank you, your Honor.

4 (Hearing adjourned until the following day, August 21,
5 2013, at the hour of 10:00 o'clock a.m.)

6 CERTIFICATE

7 I HEREBY CERTIFY that the foregoing is a true, correct
8 and complete transcript of the proceedings had at the hearing
9 of the aforementioned cause on the day and date hereof.

10 /s/Alexandra Roth 6/4/2018

11 _____
12 Official Court Reporter Date
13 U.S. District Court
14 Northern District of Illinois
15 Eastern Division
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